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"Harm caused by healthcare" instead of "Malpractice"

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Summary

Malpractice has gained an alarming dimension especially along with the introduction of compulsory professional liability insurance. On the other hand, it is quite difficult to say that malpractice is being discussed considering all responsible determinants. According to individual-focused approach, the error is caused by single individuals, so the solution can be achieved by punishing the individual. It is known that this approach does not reduce errors, and adversely affects services due to high compensations and increased insurance premiums. In Turkey, malpractice is simply considered in the customer-seller relationship context and individual-focused approach is adopted. However, it is well established that this "blame-culture" has negative effects on service provided, social perception of the profession, and job satisfaction. It should be stressed that declaring healthcare workers as the main culprit will not be fair without adopting system changes. In addition, it will violate health right by increasing the preventable errors and harms. *(Turk Arch Ped 2011; 46: 7-12)*

Key words: Malpractice, medical errors, safety, defensive medicine, liability insurance, medical ethics

Introductin

On July 25th 2000, a Concorde plane crashed in flames into a hotel nearby shortly after take-off from De Gaulle airport in Paris. A two years-lasting investigation detected how the accident resulting with the death of 113 people occured (Figure 1). One of the tyres blew during the take off run, pieces breaking off the tyre damaged the landing gear causing electrical cables to be exposed, the fuel tank to be perforated and motors to stop. Consequent fire resulted in crash of the plane (1).

When the accident investigation team examined the provocative event initiating this course, a small metal piece was reached. A metal band with a length of 25 cm and a width of 5 cm had caused the tyre to split. This piece which immobilized the windows had fallen from a DC-10 plane which had taken off 5 minutes before Concorde. With the disclosure of the report many questions arised. The most important questions among these were as follows: Why did the plane crash? Who were responsible? The accident could have been caused mainly by the following factors: falling of the metal piece, inadequate cleaning of the landing field, inappropriate characteristics of the tyres, inadequate isolation of the electrical cables, designing error of the wings, pilotage error or another factor. Based on these explanations Ministry of Transportation could come up with the conclusion that the company offering ground handling services, employees in charge of cleaning the landing area, the pilot of Concorde, the pilot of DC-10, the company manufacturing DC-10's, the employees working in the factory where the relevant DC-10 was manufactured, plane care service, the ones who did not produced sufficiently strong tyres or the ones who designed Concorde were responsible. Thus, airway company owning DC-10, the welder in charge of fixing the metal piece, his handler, head engineer of Concorde and Head of French Civil Aviation Association are being adjudicated as the main responsible individuals for the accident (2). Another question is how the share of responsibility will be determined. The answers could be as follows: experts should be consulted; assessment can be made according to compatibility with standard processes/practice guidelines; piloting the plane means primary responsibility; the main responsibility belongs to the welder who

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was directly related to the metal piece or to the employees in charge of cleaning the landing area. In addition, the following question may be put forward: what is the degree of responsibility of the pilot driving the Concorde?: one may think that he should have ensured that the landing area was checked rapidly before taking off or he should have noticed the fire earlier and prevented the plane from crashing into the hotel. It may be suggested that he should have informed the passengers about such a risk, received consent from the ones who accepted to fly and made the ones who did not accept to fly to get off the plane. From another point of view, it may be suggested that the pilot has no responsibility and the accident occured due to events which developed outside his control.

Definitions

Based on the responses given to the above mentioned questions the event would be entitled by concepts including accident, error, misfortune and disaster considering the effective factors in the process of occurrence. According to dictionaries accident is an unforeseen, unplanned and unfortunate event resulting from carelessness or ignorance causing loss of life and property (3,4). Error is defined as unintentional deviation from a specific process of behavior or practice and violation of accepted standard practice (3,4). In definition of accident chance, unpredictability and/or uncontrollability predominate. However, definition of error talks about a more mechanical process disturbed by the person who is responsible to conduct the process which could be previously controlled fully by step by step definition. Currently, a similar differentiation is widely used for the concepts of "malpractice" and "complication". Unpredictability and/or uncontollability by known methods predominate in the concept of "complication" which is defined by words like "permitted risk" or "undesirable side effect". For example, following

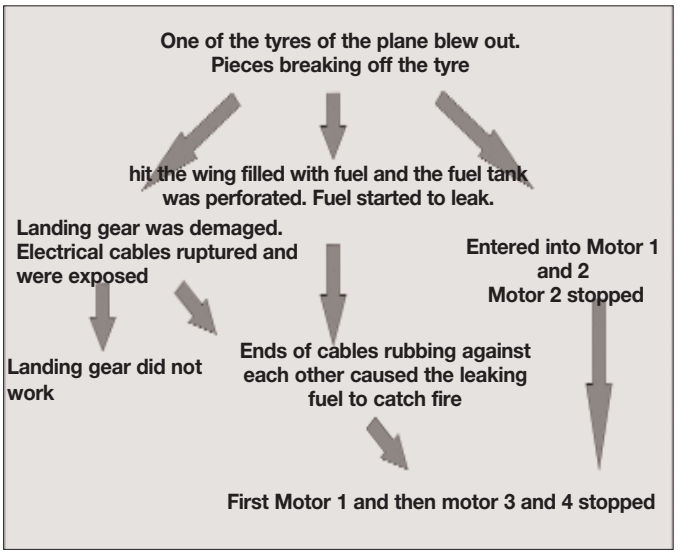

Figure 1. Progrension of concorde accident

thyroid operation hoarseness can develop with a rate of 2% in spite of all scientific precautions. In other words, medical dicipline can predict that 2 out of 100 patients undergoing thyroid operation will develop hoarseness, can not prevent hoarseness in spite of all precautions developed and prefers to continue with the intervention accepting hoarseness as an inherent risk of the intervention. The point which differentiates "malpractice" from "complication" is here; malpractice which is defined as demage to the patient because of ignorance, inexperience or negligence (5,6) includes conditions where defect of prediction and/or precaution is shown, although the event could be predicted and prevented with precautions. Based on the above mentioned definitions, "complication" is appropriate if it could not be predicted that the metal band could fall after a specific flight hour and/or if there existed no precaution against this occurance and "malpractice" is appropriate if precautions were not taken to prevent the metal band from falling or the tyre from splitting, although they could have been taken.

Approaches

According to the above mentioned definitions which are widely accepted at the present time the person responsible for the error and the resulting damage is the one who did not fulfill the standard practice because of ignorance, inexperience or negligence. However, an approach with a wider point of view exists for the occurence of error and damage. These two main approaches which were named as "individual-focused" approach and "system-focused" approach by Reason (7) differentiate significantly both in prevention of occurence of "malpractice" and in determination of responsibility and recommendations for compensation and insurance issues.

Individual-focused approach

Mainly, individual-focused approach accepts that events in nature and population have a single root cause. Cause A caused Cause B and B caused Result C, so the main cause of C is A. Thus, it is possible to prevent errors fully. To achieve this one must intervene Cause A. According to this approach which can be named as "blame culture" it is rather easy to determine the person responsible for the error which occurs during health care service; the responsible person is the individual who provides health care service (8). Thus, the individual should be encouraged to be more careful by sanctions. Interventions to be performed after "malpractice" are also individual; the culprit will be punished and will pay compensation to the one who was harmed. However, an insurance system should be instituted to prevent healthcare providers from coming to a point where they can no longer continue to do their jobs, since the number of errors can not be underestimated and compensations are high.

This approach is based on a rough deterministic explanation and is not sufficient to explain the process of mal-

practice just like Newton's theory which is not sufficient to explain the movement of substance at the micro level, beyond explanation of mechanical movement. This approach which puts the responsibility of error or harm automatically on one individual leads to three main problems. Firstly, it should be emphasized that this approach does not reduce errors or harms (9-12), because pointing out to one individual as the culprit and punishing him/her cause the errors to be covered, the factors involved in the occurance of errors to be covered and errors to be repeated (13-15). Another problem is defensive (recessive) medical practice; it is known that physicians who work with an anxiety for paying high compensations avoid providing service to high risk patients to guard themselves and order unnecessary tests to decrease the possibility of being sued (16-20). In addition to unnecessary increase in healthcare expenses, access of patients presenting to relatively high risk specialities including orthopaedics, obstetrics and gynecology and neurosurgery to healthcare service is blocked. Another problem of individual-focused approach is that it establishes private insurance system as a solution. Mentality of private insurance system is focused on the stage after the occurance of harm instead of focusing on reducing risks/errors. Therefore, professional liability insurance does not reduce "malpractice" and it is generally not successful in compensating harms (21). Another problem with the insurance system is that guarantee packages are not inclusive enough and that insurance premiums increase gradually for physicians practicing in high risk specialities (9-16).

System-focused approach

In contrast to individual-focused approach, system-focused approach does not associate an event in nature and population with a single root cause; recognizes multifactoriality, the dialectic interaction between factors and results and the fact that they change each other. In addition, it considers that error is a part of human nature and can not be totally abated. Therefore, it accepts that the main responsibility belongs to the service system which can not prevent individual errors from transforming into harms instead of determining a single culprit for the error occuring during healthcare service and punishing him/her. Consequently, errors should be tried to be reduced on one side and prevention of harms should be targeted on the other side. For this objective the process during which the error has caused harm is examined retrospectively. According to "cheese theory" developed by Reason some errors overcome all preventive measures and lead to harm (Figure 2) (7).

Figure 2. "Cheese theory" in the process of error-harm (Figure; adapted from the article with specified identity with permission from BMJ Publishing Group: Reason J. Human error: models and management. BMJ 2000;320(7237))

System-focused approach which tries to prevent recurrence of error by focusing on the error itself looks for answers to the following questions: "Which preventive measure did not work? , "What should be done to prevent recurrence?" None of the preventive measures in the example could prevent the error from causing harm; measures should be developed or new measures should be taken. This approach is known to be efficient in preventing many errors or harms (9-22-23).

Status in Turkey

In our country, malpractice is becoming increasingly important for healthcare workers and society and maintains its actuality. Although there is no scientific information in literature about an increase in cases or suits, problems increasing the probability of errors and harms including numerical evaluation of healthcare service, giving priority to limiting expenses instead of service quality, argumentative quality of education in medical faculties which rapidly increase in number, absence of planned and widespread continious medical education programs and defects of infrastructure may cause "malpractice" to become a current issue compared to the past. In addition to factors related to healthcare workers and institutions, attitude of the media pointing out to healthcare workers as the culprit, unclear definitions like "conscious fault" and "possible intent to harm" placed in the new Turkish penal code in article 22/3 and 21/2 and judgements for high compensations (24) also lead "malpractice" to become a more common current issue leading to anxiety. Besides, it should be kept in mind that the main reason is related to the politics

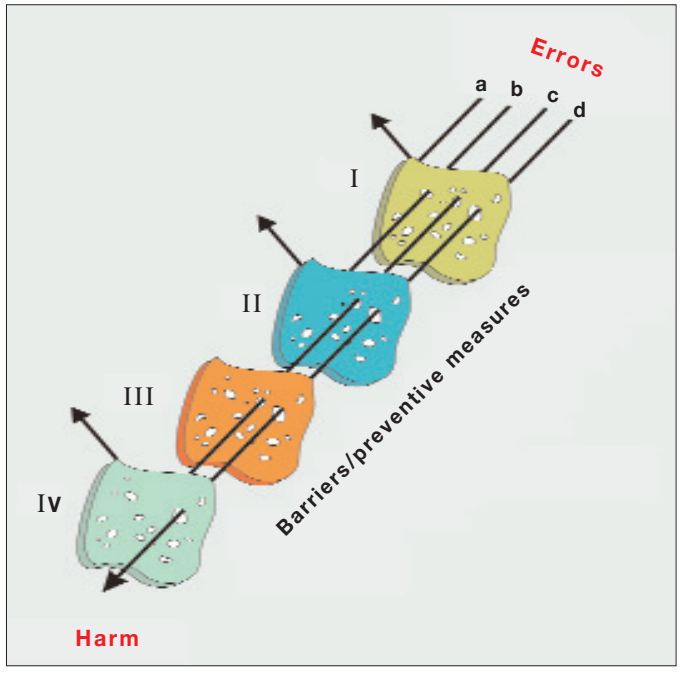

Figure 2. "chese exauple" in mistake-dauage continuum. (fig: with permission of BMJ publishing group, has been adopted from the indicated article: Reason J. Human error: models and management. BMJ 2000;320(7237)

of health care applied in our country. Health Transformation program which is a project designed by the World Bank mainly aims at withdrawing the public sector from the area of health care and privatizing health care (25). As can be followed up on the Project page of the World Bank, General Healthcare Insurance was instituted and expenses outside the basic guarantee package were projected to be payed out of pocket. Health care centers were transformed into family practice units and full-time code was introduced with the intention of rendering the labor of health care workers dependent on the market and lowering its price. As the last big step of Transformation, Public Hospitals Union Code which is planned to be introduced in 2010 aims public hospitals to be transformed into business enterprises competing with the private sector with their own income and employees to be transformed into contractual status (26,27). On the other hand, priority is given to cost-efficiency in each dimension of the health care service and distribution of sources, the quality and quantity of health care service and politics of employment are decided according to cost-efficiency instead of patient benefit. With all these political approaches an important transformation is being experienced in medical institution, identity of physicians and professional values and patient-physician relationship. While it is becoming more an more difficult to protect professional values against the priority of cost-efficiency, patient rights are being reduced to the customer's right of choosing and informed consent which is the most important part of respect for individual self-determination is being reduced to a contract of purchasing and selling between the seller and customer. These political approaches which disturb the relationship between health care providers and patients define harms caused by service as "customer harm" and characterize "malpractice" by individual-focused approach as the Ministry of Health emphasizes (28).

"Of course, you will try to work with zero tolerance or zero error (…) but, if there is somone who has faults or defects, he/she will pay a price. Here, the important point is to insure the health care workers (…). Because, it is necessary to protect both the patients and the rights of health care workers in addition to the rights of the patients, so that the system continues in a healthy way."

This approach is also valid at legal plane. "Malpractice" is defined as "Intentional fault committed because of contradiction to obligation of care and attention which is required by a certain job or profession" in the Turkish penal code article 53/6. In accordance with this definition, expertise institution is mainly referred in investigation of harms caused by service and individual responsibility is evaluated. Lastly, all dimensions of individual-focused approach will be applied with the introduction of compulsory professional liability insurance. Considering all these political approaches and adjustments it becomes clear why "malpractice" is becoming a common current issue leading to anxiety and it can be predicted that negative results of this individual-focused approach will also be experienced in our country when providing healthcare service based on market rules is combined with this approach.

What should be done?

Recommendations intended for the system

Firstly, health politics and insurance system should be constructed according to patient benefit rather than cost. For example, the highest quality plaque should be reimbursed by the Social Security Institution rather than the cheapest plaque. Less errors will occur in a system where no anxiety for succes related to the quality is created and the time assigned for each patient is appropriate. High quality education of health care workers before and after graduation, encouragement and standardization of education by licence renewal tests, eliminating infrastructure problems and negative working conditions would reduce the occurence of errors and harms. In addition, generalizing standard practice guidelines would facilitate both protection from "malpractice" by standardization of education and practice and objective evaluation of expertise institution.

One of the main initiatives to reduce errors and harms is adoption of system-focused approach (9). Retrospective analysis of harms will provide measures to be taken to prevent errors from causing harm. Currently, "patient safety" is being transformed into a multidiciplinary area which involves engineering branches and international standards are being developed in this issue (29); health care service should be revaluated according to these standards and measures which have been shown to decrease the risk should be practiced in a planned way. In addition, instead of punishing individuals, conditions which will encourage reporting of errors should be created (9). For example, with the Patient Safety Quality Improvement Act which was introduced in 2005 errors were encouraged to be shared rather than concealed by ensuring that information related to patient safety is used only for improvement of the system rather than for trials (30). Another practice facilitating discussion of errors and complications inside a team is "meetings of mortality and morbidity" held in hospitals (31). On these meetings, medical interventions are evaluated in the light of evidence-based information following case presentation.

Discussions on differentiation of "malpractice-complication" in every medical practice, though healthy may be predicted not to be directive in terms of evaluation of subjective harms and not to come to a conclusion because of lack of scientific information and continious improvement. In addition, as a general mentality compensation of harms caused by service of medical institution regardless of source (error or complication) would be a practice in accordance with health right. Because of these justifications a fund managed by the government should be created for compensation of harms caused by health care service instead of a private insurance market. For exam-

ple, Turkish Medical Association suggests that this fund is managed by Medical Harms Compensation Committee and is limited to public institutions (32). In addition, participation of private health care institutions and thus coverage of harms caused by private heath care service may be suggested.

What can physicians do individually?

Since the main factor in the occurance of "malpractice" is the construction of health system and medical education, physicians can do little individually. However, protecting professional confidentiality and especially taking informed consent appropriately (1) predominate as the most important patient rights in this context. It is known that physicians who do not establish confidence-based relationships with patients, are not careful in communication and do not inform patients adequately are at a higher risk of being complained about (33,34). To ensure that the patient understands the nature of the intervention to be performed, complications and course of disease if therapy is not performed (beyond giving information) and to document the refusal of therapy and to keep records appropriately will provide the patient to participate in medical decisions about himself/herself. In addition, it has been shown that being sure about scientific base of interventions, considering practice guidelines and recommendations of speciality associations reduce the risk of being sued (35).

Physicians should express their main suggestions including improvement of working conditions in institutions and being able to assign enough time for each patient both in the institutions they work and via their professional associations. In addition, if infrastructure/equipment shortcomings and negativities of working conditions increase the risk of harm to patients, the obligation of physicians to provide health care in those conditions becomes controversial. Thus, the physician can refuse to provide health care service as noted in article 18 in Medical Deontology Regulation, if the patient does not need urgent intervention and refering to another physician or institution will not affect the patient's health negatively. Turkish Medical Association Physicians' Right Notification notes that physicians may not accomplish the obligation of service in these conditions. This attitude based on the basic professional values "First, do not harm" and "priority of patient benefit" will also contribute to improvement of negative conditions.

At the stage after occurance of "malpractice", it will be helpful to communicate with the patient and relatives in an open, clear and calm way, collect all documents related to interventions and informed consent and compile scientific bases for interventions (investigations, references, books and guides). To help the individuals who will be evaluating a complaint about a physician to see all stages of the process, occurence of error and how it transformed into harm should be explained and documented as far as possible. In addition, legal counseling should be received via professional associations and/or the institution where the physician works.

Conclusion

The politics of privatization of health care service defines harms caused by service as "customer harm", has an individual-based approach to "malpractice" and heads towards insurance and compensation system instead of reducing errors and harms. It is known that just blaming individuals without considering all factors which affect the quality and quantity of service worsens service and affects social perception of the profession and professional satisfaction negatively both in materialistic and spiritual way. "Malpractice" should be defined as "harm caused by healthcare" instead of "medical practice error", prevention of harm should be emphasized instead of unrealistic objectives like reducing errors to zero and retrospective error-harm analysis should be performed in all aspects of service. Definitions of "malpractice" and complication are transitive, variable and open to interpretation. The important point is to compensate harms to health care receivers regardless of the cause. Without actualizing all these systemic changes, announcing physicians as the main culprit will not be fair and will be contrary against health right because it will not reduce errors and harms and may even increase them.

Conflict of interest: None declared

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