Medico-legal Article

Know the boundaries within your scope of practice

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Inperitia culpae adnumeratur the Romans professed, meaning lack of skill or ignorance constitutes negligence. Although this maxim has been incorporated in our law system through the Roman Dutch law system, it does not mean that mere ignorance amounts to negligence, as no one can be skilful at everything.

In old times, physicians who were not skilful at their work could be sentenced to having one of their hands amputated or even to facing the vengeance of the deceased's family. In later years, however the law accepted that the death of a patient is not in itself indicative of medical negligence. It would seem that nowadays the handing over of a sum of money to rectify a medical mishap has taken the place of all those atrocious vindications.

The scope of any medical practice is regulated by the National Health Act 61 of 2003. Whereas, in principle, general practitioners are not limited to any particular field, orthopaedic surgeons (and any other specialist, for that matter) are, however, limited to practice only within the boundaries of their own field of specialisation. The Health Professions Council of South Africa is the appointed watchdog seeing to it that practitioners keep to what the law allows. The Council is also the guardian of the prestige, status and dignity of the profession, as well as of the public interest.

Why should any orthopaedic surgeon venture into unknown territory except in the case of an emergency?

The problem is that the field of orthopaedic surgery has become such a vast field of sub-specialisation that orthopaedic surgeons, newly registered or in practice for a long time, all need to choose a part of this vast field that suits him best. Although one can still speak of a general orthopaedic surgeon, it does not mean that that person will be able or willing to practise in all sub-fields of orthopaedic surgery. The many different subspecialty associations that have evolved are witness to this fact. A paediatric or foot and ankle orthopaedic surgeon will not try his hand at spinal surgery and vice versa.

Because, in principle, every orthopaedic surgeon is, however, allowed to move into the different fields of subspecialty, the subspecialties are not protected against the generalist in the same way as patients are not protected against such possible events. The patient usually does not know that a certain general orthopaedic surgeon is not experienced to operate on the patient within the subspecialty of his problem.

If a patient knows, however, that the doctor consulted is not that experienced in a certain field after the doctor has explained the possible consequences, the maxim ***volenti non fot inuria*** comes into force. A patient who willingly consents to a procedure, knowing that it is the doctor's first effort at performing the procedure will not have a legal foot to stand on if things go wrong.

Here common sense comes into play. Why should any orthopaedic surgeon venture into unknown territory except in the case of an emergency? The rule of law in this instance is one of **foreseeability and preventability.** If you can foresee complications and if you cannot prevent those complications from happening because you are too inexperienced to take the appropriate steps the more experienced physician would have taken, you are negligent and responsible for any claims arising from these complications.

As one of our older judges used to say, you are not expected to bear upon the case entrusted to you the highest possible degree of professional skill, but you are bound to employ reasonable skill and care. The standard is always the general level of skill and diligence possessed and exercised at the time by the members of the branch of the profession to which that practitioner belongs.

It is regarded as negligent if you undertake work requiring a certain expertise without possessing the necessary degree of competence. Annexure 6 Section 1 of the ethical Rules of Conduct states: "A medical practitioner or medical specialist-a) Shall perform acts only in the field of medicine in which he or she was educated and trained and in which he or she has gained experience to both extent and limits of his or her professional expertise".

So here is the same question again. Why venture into operations that do not fall within your experience or training? Is it for the money? Is it for the fame of being one of the first to do such an operation? Is it overconfidence in your own abilities, or is it to show the outside world you can? Be aware that the rule of ***imperitia culpae adnumeratur*** could be applied to you. Be sensible about experimenting on your patients, as you will be held accountable.

The Human Rights Bill, chapter 2 of our new constitution, holds in section 12(2): "Every one has the right to bodily and psychological integrity which includes the right to bodily and psychological integrity which includes the right 12(2) (c): not to be subjected to medical and scientific experiments without their informed consent". Taking a gamble with your patient's health will be regarded as an infringement of that person's human dignity (sec 10) and if he or she dies as a result of the intervention it will be regarded as an infringement of his right to life (sec 11.) You can even be convicted of culpable homicide as in the case of an intern who administered a toxic overdose to a patient in 1965.

The same accounts for those among us who want to be leaders in the education of our registrars. If you do not possess the necessary skill and knowledge to prevent the foreseeable complications of the operation you teach you are culpable of negligent behaviour. How dare you teach registrars a technique you have not mastered yourself when it is of the utmost importance to teach them the correct procedure from the start? This is certainly a grave burden only a few among us can bear.

My first example comes from a court case of 1916 regarding a radiologist who through his incompetence caused severe burns to a patient while taking X-rays. A lack of skill is the equivalent here of negligence and renders him culpable.

In a more resent case from 2003, a dentist was held negligent for not referring the patient to an appropriate specialist and causing damage to the inferior alveolar nerve while extracting wisdom teeth. It was a foreseeable and preventable complication!

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In the field of spinal surgery, I should mention the example of performing a total disk replacement at an unstable level of the spine, for which there is, in fact, a total contraindication. Foreseeable complications, such as a displacement of the prosthesis and possible vascular disaster, can be prevented by keeping to the correct protocol for such an operation.

It is clear that not only general orthopaedic surgeons have boundaries but also those in a sub-specialty field. Where locality sometimes allows a practitioner to perform a certain procedure with great risks to the patient because there is no other help available, the locality is not, however, always a relevant excuse. The fact that several incompetent or careless practitioners happen to settle at the same place must not affect the standard of diligence and skill that local patients have the right to expect, according to a judgment made by the Chief Justice Innes as early as 1928.

The view still seems to be preferred these days, especially in view of the excellent medical facilities available countrywide as well as the accessibility of knowledge thanks to the present technology. You have a duty to inform yourself about progress made in your field and to familiarise yourself with new techniques. There is no excuse for ignorance or a lack of skill with all the congresses, workshops and expert-assisted teachings on offer.

Why would you venture into something you have only heard of and not make the effort to find out and see what it is all about? You could be found negligent and the risk is simply not worth it. Continually educate yourself, not only out of respect for your patients but also to improve the standard of the profession you practise.

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