

Reasonable practice is not defensive practice

Unsatisfactory outcomes in medicine are too common. There are multiple causes, one of which is medical errors. In our society the response to medical error is typically legal, rather than investigative and remedial. This should be deplored by both the profession and the public. The clash between the legal and medical systems rarely leads to a decrease in the likelihood of future error. Rather, a defensive approach is fostered that encourages concealment of error and the attribution of blame. This balkanises the parties and makes solutions more difficult to find.

The legal response to error and harm is reflective not only of our culture and history but also of the need for patients to ascertain information about the error and receive a financial remedy if loss has occurred. Given that this is the setting in which we find ourselves, the availability of the defence of “peer professional practice” (that an action is not negligent if the professional acts in a way that is widely accepted by his or her peers) gives some comfort.

Mahar and Burke, in this issue of the Journal (*page 253*), draw attention to some important limitations of this defence. They point out that the defence is not a substitute for the need to properly warn patients of the material risks involved in a procedure. They also demonstrate that the requirement to practise according to widely accepted professional standards implies the need to be abreast of contemporary clinical practice. Surely this is the purpose of continuing professional education.

Consequently, there is no justification for the practice of purely “defensive” medicine.

Mahar and Burke’s article also highlights a negative interaction between the legal and medical cultures. In a recent case that relied on the peer professional practice defence, the testimony of one of the expert witnesses was discounted because, when forming his opinion, he consulted a colleague about her views on the case, which led the court to doubt the witness’s standing as an expert. In contrast, the medical view is that consultation in the face of doubt is protective of the patient and not a sign of weakness.

As a doctor, the legalistic approach of the court in this regard reinforces the perception that the law is an ass, that it will never be understandable or reasonable, and that the solution to medical errors will never lie in the legal sphere. As a profession, this mandates that we make the study and minimisation of medical error and unfavourable outcomes our own. It is time to responsibly admit and embrace error and empower ourselves to grow. While “the truth will set you free”,* US President James Garfield was probably closer to the reality of the process when he supposedly added, “but first it will make you miserable”.

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* John 8: 32.