USSR Letter

Judicial investigation of complaints

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Although the concept of medical error may be as old as medicine itself, societal arrangements for review and adjudication in this area display a striking variety. Ignoring many important differences among Western countries, Soviet orthodoxy reduces the variation to a crude dichotomy between "capitalist" and "socialist" political systems. Taking the United States as a paradigm, it indicts "capitalist" states as the home of malpractice suits and (so far as I know) completely disregards statutory schemes for review of complaints, such as the Health Service Commissioner in the United Kingdom.

As legislation now stands, of course, that officer of the Crown may not examine issues that turn on clinical judgment, and hence he differs sharply from his Soviet counterpart (to use the term very broadly). In the Soviet Union responsibility for investigating complaints about medical care, among other things, falls to a branch of the legal system known as the procuracy, a countrywide agency whose origins are pre-revolutionary. A procurator's functions extend beyond judicial investigation, however, since he has the power to initiate proceedings in court; there he plays a part analogous to that of a public prosecutor.

As for the competence of the procuracy to investigate health service complaints, the first point to be made is that the officials do not include qualified medical practitioners. This omission is rectified to some extent by the power of the procurator to appoint medicolegal commissions, whose primary function is to determine whether a "medical error" has occurred. Dating back at least to 1928, these commissions are constituted from leading specialists in the relevant specialty and from health service units known as medicolegal bureaux, which provide the staff to act as presenter, secretary, and chairman.

Typical questions

The modus operandi of medicolegal commissions reflects the fact that they must provide answers to a set of questions that has been formulated by the procuracy's investigator after consultation with the head of the medicolegal bureau or other appropriate expert. The content of these questions is said (cogently enough) to vary substantially according to the case under discussion. The source goes on, however, to identify the "most frequent and typical" questions; to convey their character and scope they are quoted below in full.

(1) What is the cause of death (in a fatal outcome) or what is the degree of severity of bodily injuries (in a non-fatal outcome);

(2) Are there omissions in the actions taken by medical personnel and how are they manifested;

(3) What is the reason for incorrect actions of medical personnel (late admission to hospital, unusual course of the individual's illness, absence of diagnostic apparatus, inexperience of the doctor);

(4) Did the doctor have an opportunity to foresee the dangerous consequences of his actions and could he have prevented them;

(5) In the case of an incorrect diagnosis, indicate (*a*) were all means of diagnosing the illness employed by the doctor and which appropriate methods were not used; (*b*) what measures were taken to make the diagnosis more precise (consultations with more specialised doctors, case conferences, etc);

(6) In the case of an incorrect surgical intervention, establish (*a*) what were the concrete manifestations of the doctor's incorrect actions during the preparatory process, performance of the operation, and postoperative period; (*b*) what were the reasons for the incorrect performance of the operation;

(7) Establish whether a causal connection exists between the omissions of the medical personnel and the unfavourable outcome of the illness and how it is manifested; if a causal connection is absent it is necessary to substantiate its absence;

(8) If the medical actions were incorrect, which were the causes of the unfavourable outcome of the illness;

(9) If medical care was not provided (failure of the doctor to attend when the patient called, refusal of admission to hospital, late provision of medical care, etc) establish whether the doctor could have foreseen the unfavourable consequences which developed for the patient;

(10) If several medical workers are accused indicate who out of the medical workers listed should have performed the relevant treatment and also evaluate the significance of the actions of each of them in the onset of the unfavourable outcome;

(11) Would it have been possible to save the patient's life with correct and timely provision of medical care;

(12) What infringements in the organisation of medical care occurred at the curative establishment in question?

Some safeguards

Here it may be noted that cases already considered by treatment control commissions (which were discussed in my last article, 20 August, p 551) may fall to be re-examined through an interrogation of basically the same evidence. For the medicolegal commissions, though, procedural rules assume a greater importance since they occupy a position further along the notional continuum that runs from the practice of medicine to the judgment of a court. Thus the person proceeded against has a right to attend the discussion of questions and answers (provided the investigator agrees), to clarify matters of detail, to pose additional questions (if the commission permits), and to object to any of the specialist members and nominate others as replacements. No person with an interest in the outcome may become a member of the relevant commission, a safeguard

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which is strengthened by the fact that commissions are constituted at a higher than local level of administration.

As hardly needs saying, the task of proving causal links between treatment and outcome may entail enormously complex practical and conceptual problems. It may be argued that the ground rules for decision making by commissions go some way towards excluding grosser forms of error or individual bias. In considering answers to the questions posed, members must be governed by "generally recognised opinion" in the relevant branch of medical science or by the "special rules and instructions" issued by the all-Union Ministry of Health. If an issue is open to doubt allowance must be made for the various views concerning diagnosis and treatment: "Where the actions of a doctor under discussion are debatable from a scientific or practical viewpoint, they cannot be regarded as incorrect." Disagreements over the answers to questions must be recorded and not resolved by a simple majority vote. In their conclusion the commission is required to indicate whether official instructions and "generally accepted medical views" were infringed by the doctor, and how this infringement was shown.

Information on which to evaluate this system of review, though exiguous, is not totally lacking, and the main source for this article[1] identifies two substantive problems. The first is that commissions occasionally exceed their jurisdiction and transgress the dividing line between medical matters and questions of guilt (the latter, of course, are for a court to decide). The reasons cited for a commission's failure to observe its remit are, on the one hand, an overzealous attitude among medicolegal experts, and, on the other, pressure from investigators. The second problem concerns the presentation of findings: these are normally set out in a question and answer pattern that makes causal reasoning more difficult, may give rise to repetition or even contradiction, and may conceal the key issues for the investigator and the court.

Doctor in court

The validity of the last point receives endorsement from an article that is exceptional in conveying sympathy for a doctor enmeshed in judicial investigation. Published in *Meditsinskaya Gazeta* in 1977, it reports the experience of Ruben Samsonyan, head of an obstetric department at a rural district centre hospital in Armenia.[2] The essential details are as follows.

A patient died as a result of atonic haemorrhage after an induced birth, and the subsequent investigation dragged on for nine months. "Samsonyan was questioned many times, as were his colleagues and the specialist experts. They all testified that, however painful it was to admit the fact, medicine proved to be powerless in the present case. Even so, the procuracy has taken the matter to court."

The court heard the experts repeat what they had told the investigation. "It is possible that a more experienced specialist might have resorted a little earlier to radical measures for delivery. But, on the other hand, the doctor had not observed anything threatening in the patient's condition. It was precisely for that reason that he decided to apply forceps and not perforate the head, which in the present case . . . would have been more justified." At this point the procurator broke in: "Does that mean he is guilty all the same?"

From the article it is abundantly clear that Samsonyan, far from being guilty of neglect or carelessness, had used his best efforts to save the patient. And, while he displayed less than theoretically ideal skill, that shortcoming did not cause the tragic outcome, which apparently arose from "a disturbance in the system of blood coagulability" impossible to diagnose in the short time available. "But all the same," insisted the procurator, "the doctor made a mistake."

That intervention highlights very precisely the fundamental defect of the review system, which is that, although "medical error" has no place in the Soviet criminal code, it tends to undergo a process of conceptual stretching so that it becomes synonymous with crime and hence punishable by law. According to the article: "Even experienced jurists sometimes fall under the influence of the unchallengeable thesis: But all the same an individual has died. . . ."

As it happened, in Samsonyan's case, the court would not pass a sentence of not guilty, choosing to refer the matter for further investigation. "The days of uncertainty and nervous strain dragged out again for the doctor," but at last the procuracy was obliged to accept that there was no corpus delicti. Generalising about such cases, the article proposed that if a commission has not found carelessness or negligence the doctor in question should be brought before a court composed of medically qualified persons and not be subject to ordinary criminal proceedings. It appears that this proposal has not been implemented.

References

[1] Gromov AP. *Prava, obyazannosti i otvetstvennost meditsinskikh rabotnikov.* Moskva: Meditsina, 1976:156-65.
[2] Spektor M. Sudyat vracha. *Meditsinskaya Gazeta* 1977 Jan 26:1.

MATERIA NON MEDICA

Reef now, pay later

"You will never forgive yourselves if you don't go and see it now you have come so far." Canny these Australians. If they say so, then it should be good. So we chartered the plane. It was expensive. Still, put it on the Barclaycard.

We were on Lindeman Island on the Barrier Reef, and it was *very* hot, January.

The amphibian plane was tiny, just room for the three of us and the pilot. Real flying: we felt every bump. Low over the islands and out over the Coral Sea. After 40 miles we saw the outer reef below us, blotchy brown shining beneath the blue sea like a long irregular ribbon. We circled, and landed in a blue lagoon—Hardy's lagoon—surrounded by the sea lapping over the coral.

We climbed out into a moored, small glass bottomed boat and when we had put on our plimsolls the pilot showed us how to walk on the coral, which was not easy with the water over our ankles. The corals were razor sharp, all colours and sizes—stag horns and brain corals, aptly named as they were rounded and had sulci which looked just like the surface of a brain; velvet soft to the touch and in vivid colours, quite unlike the bleached white coral skeletons we had seen ashore. The coral teemed with life: giant clams which ejected water in a gush when you touched their bright turquoise mantle, delicate brittle stars whose legs fell off when you lifted them, and enormous slug like molluscs. In the pools in the corals multicoloured fishes darted and swam when we disturbed them.

Time was short. We put on our face masks and snorkels and swam over the edge of the reef towards the open sea. Not very far. The coral fell away rapidly into the deep blue depths. Here the corals were like big bushes and trees. Between them swam the fishes. Not small ones like those in the coral pools, but big fish. Brightly coloured big fish. Striped yellow and black angel fishes the size of dinner plates, luminous blue fishes that looked like small submarines. And we were there in the water with them. It was like swimming in a tropical fish tank and we were the size of guppies. Slightly frightening. Not because of the sharks which we knew were there, but because nature was so near and we were part of it. We were buzzed by the smaller fish when we entered their territories but mostly the larger fish ignored us. But watched us.

It was over all too soon. We didn't bring away any coral. It was too perfect to steal from. But we had unforgettable, moving memories. The Barclaycard account was waiting for us on our return to England. It was worth every penny.—N C ECCLES, general practitioner, Manchester.