



### E45 Medical Malpractice Cases and the Physicians' Rights in Turkey

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After attending this presentation, attendees will gain an understanding about the legal and ethical aspects of the patients' and physicians' rights and will start to raise awareness in the title question of "What about the Physicians' Rights?"

This presentation will impact the forensic science community by raising awareness of the physicians' rights as well as the patients' rights and discussing legislative problems in Turkey. Also discussed will be the distinctions between countries around the world on this issue.

World Health Organization (WHO) describes "health" as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. The right of health is described as the rights for "the establishment and development of health." The Turkish legal system has new definitions in terms of civil and penal liability of medical doctors. The Turkish medical doctors are wishing for a reduction of financial burdens due to malpractice insurance and express the discomfort they feel from being frequently sued.<sup>1</sup>

Because of the problems encountered during health services, fast and permanent solutions have been investigated in the last couple of years. Some legal arrangements have been made for more effective evaluation of health care personnel who made mistakes and new measures have been noted. Patients' rights have been protected with various legislations, arrangements, and regulations, yet health care personnel have still remained far behind all of these. As a result of the new regulations with aggravated circumstances, medical doctors face heavier penalties and indemnifications. Because of that, conditions today show us that none of the medical doctors may remove themselves from medical law suit cases. Even if all the unwanted consequences and complications, including the undefined ones, are avoided, the payment of compensation due to malpractice cannot be avoided. Results of epidemiological studies show that only 2% of the real medical mistakes are reported to the courts. More striking is data showing that only 20% of the cases that end up at the courts are actually medical malpractice. This means that the medical defense system which is described as a kind of forensic consultation has to cope with an 80% portion using a serious medicolegal risk management.<sup>1-7</sup>

The most important document on the subject is the "Declaration of Wrong Medical Practice (Malpractice)" adopted in the 44<sup>th</sup> General Assembly of the World Medical Association in 1992. According to this declaration, there should not be any obstacles to meet the loss of patients who suffered as a result of malpractice. Appropriate policies should be developed for medical doctors who have inadequate knowledge and skills, and medical doctors should be prevented from medical applications until their failure is eliminated.

The Organization for Economic Cooperation and Development (OECD) report on the "Medical Malpractice Insurance Coverage of Countries, 2005" shows that malpractice lawsuits are increasing every day and trust between the doctor and patient is being lost. Different applications are seen in each country. For example, in Belgium the "Order of Medical Doctors" which represents medical doctors, has been given the power of canceling the license and registry of the medical doctor who commits malpractice. In Portugal, the Portuguese Medical Association also has this authority. Malpractice issues in Denmark are resolved by The National Board of Health. Similar applications are in force in Hungary; however, deficient medical doctors are trained free of charge. The United States, United Kingdom, Sweden, France, and Finland have medical malpractice laws and practices similar to each other. Turkey has basic legal regulations.<sup>1</sup>

Under Turkish law, in order to describe the act of a medical doctor as a crime, the action should be contrary to law, contain an element of the defect, result in damage, and there should be a relation between the damage and defect. As there is not a medical malpractice law in Turkey, the medical doctors are judged under general criminal and civil law. The Turkish Medical Association is involved in ethical aspects only. The penalties applied to medical doctors and other medical staff in case of faulty medical applications varies from one country to another. A special arrangement covering all countries does not exist for malpractice.<sup>1-7</sup>

In this presentation, various concrete case examples will be examined and discussed according to legal regulations and, at the end, participants will have detailed information on the concept of malpractice in Turkey and universally, as well as the new regulations and the legal dimensions which need to be renewed.



## Jurisprudence Section - 2014

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### Medical Malpractice, Physicians' Rights, Patients' Rights