

Research Article**Judges' Opinion on Doctors' Legal Responsibility in the District of Bamako**Théra JP¹, Diassana M², Théra F³, Soumah M⁴, Botti K⁵, Etté H⁶, Sow ML⁷¹Maitre-Assistant de Médecine Légale à la Faculté de Médecine, Bamako, Mali²Substitut du Procureur, près le Tribunal de Grande Instance de Kayes, Bamako, Mali³Docteur en droit Président du Tribunal de commerce, Bamako, Mali⁴Professeur agrégé de Médecine Légale, Faculté de Médecine de l'Université Cheikh Anta Diop de Dakar, Sénégal⁵Professeur agrégé de Médecine Légale, Département de Médecine du Travail, Médecine Légale et Toxicologie, UFR Sciences Médicales-Université Félix Houphouët-Boigny d'Abidjan Cocody, Côte d'Ivoire⁶Professeur Titulaire, Département de Médecine du Travail, Médecine Légale et Toxicologie, UFR Sciences Médicales-Université Félix Houphouët-Boigny d'Abidjan Cocody, Côte d'Ivoire⁷Professeur Titulaire, Département de Médecine Légale /Médecine du travail, Faculté de Médecine de l'Université Cheikh Anta Diop de Dakar***Corresponding author**

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Abstract: Doctors' legal responsibility is a challenging issue in medical practice. Lawsuit against Doctors is growing worldwide. In some countries, there is mistrust and disagreement between Judges and Doctors. The purpose of our study was to find out the opinion of judges about Doctors' legal responsibility. It was a prospective cross-sectional study carried out in Bamako. We interviewed 20 judges. In the opinion of 90% of judges, doctors have to be sued in case of medical malpractice. For 30% of judges, there is no difference between the legal responsibility of private sector doctors and those of the public sector.**Keywords:** Legal, Responsibility, Doctors, Judges, Opinion.

INTRODUCTION

Responsibility in medicine is a dynamic and at the present time, troubled idea. The concepts of medical responsibility arises from the social and economic structure of biomedical science, the perceived identity of the "good physician", shifting conceptions of authority, autonomy and also the choice in physician-patient relationship [1]. Responsible medicine in the contemporary era is defined by the action and continued treatment to the point of cure, stability of the condition or death of the patient [2]. Doctors' legal responsibility is linked to doctor-patient relationship, medical negligence or malpractice. The creation of a physician-patient relationship may be critical to the legal obligation of a physician to care for a specific patient [3]. Thus, once a physician-patient relationship is established, it continues until it is terminated by the patient, through mutual consent. There is no need of physician's service and the physician withdraws after reasonable notice to the patient [4]. In general, problems of medical malpractice are related to two issues: the physician-patient relationship or improper medical care leading bodily harm [5]. The threat of clinical negligence litigation remains a fear for all practicing doctors [6]. Doctors have been the target of

a growing number of civil, criminal lawsuits, as well as ethical procedures in last years. Medicine is a widely targeted career, owing to its inherent risks and a mistaken approach of the Judiciary Power about the obligations of medical doctors [7]. Very often the medical doctors and lawyers respectively are directed to cooperate in different ways. It is worth informing the medical doctors in a simple and understandable way of a newer and more recent practice of the term of responsibility and its usage in legal practice [8]. Criminal prosecutions against doctors for medical malpractice have been found to grow worldwide. Frequency of medical malpractice claims has increased since 1960s. In United States lawsuits filed by aggrieved patients alleging malpractice by a physician are relatively found to be common. A survey among specialty arthroplasty surgeons had reported more than 70% of respondents had been sued at least once for medical malpractice during their career [9]. In Canada, there were 190 lawsuits against doctors in 2005 [10]. In Morocco, each year several cases of medical malpractice are prosecuted; 90% of the claims dealt with surgical complications [11].

Medical practitioners are affected by malpractice liability. Several studies have identified specific specialties that are at “high-risk” for litigation that include Emergency Medicine, General Surgery, Orthopedic Surgery, Neurosurgery, Obstetrics/Gynecology, and Radiology [12].

In Mali, many doctors have been prosecuted these last years, some of them were jailed. In the opinion of many medical personnel, the imprisonment of their peers was unfair. The purpose of this study was to find out the opinion of judges about doctors legal responsibility.

MATERIALS AND METHODS

We conducted a prospective cross-sectional study from October 2009 to September, 2010 in the six law court of first degree of Bamako. It was a comprehensive survey. Were included, all the judges working in these courts; so the other personnel were excluded. We collected the data from an interview of the consenting judges on a standardized questionnaire. Data entry and statistical analysis were performed using the statistical package for the social sciences (SPSS) 12.0. Confidentiality of data was assured.

RESULTS

- Of the 20 judges, 75% (n=15) were males and 25% (n=5) were females with a sex ratio Male/Female=3 (Table 1).
- The age of the judges ranged from 30-60 years, with a mean age of 45 years. The age group 30-40 years accounted for 65%.
- 65.5% of judges had 5 years of Professional experience.
- In the opinion of 90% of judges, doctors have to be sued in case of medical malpractice.
- For 30% of judges, there is no difference between the legal responsibility of private sector doctors and those of the public sector.
- In the opinion of 55% of judges, medical expertise is necessary in the trial of doctors. For 45%, there is no need to perform medical expertise in the trial of doctors (Table 2).
- For 40%, medical expertise is necessary solely in criminal trial (Table 3).
- Only 20% had already ruled in the trial of doctors (Table 4).

Table 1: Age distribution of judges

Age (year)	N	%
30-40	13	65.0
41-50	5	25.0
51-60	2	10.0
Total	20	100.0

Table 2: Distribution of judges according to their opinion on the necessity of medical expertise in the trial of doctors

Necessity of medical expertise in the trial of doctors	N	%
Neither necessary	9	45.0
Sometimes necessary	7	35.0
Always necessary	4	20.0
Total	20	100.0

Table 3: Indication of medical expertise according to the 7 judges who said it is sometimes necessary

Indication of medical expertise	N	%
Criminal trials	5	71.4
All trials	2	28.6
Total	7	100.0

Table 4: Judges' opinion on the circumstances of lawsuit against doctors

Circumstances of lawsuit against Doctors	N	%
In case of any medical malpractice	15	75.0
In case of intentional medical malpractice	2	10.0
Total	20	100.0

DISCUSSION

Of the 20 judges, 75% (n=15) were males and 25% (n=5) were females with a sex ratio Male/Female=3.

The age of the judges ranged from 30-60 years, with a mean age of 45 years. The age group 30-40 years accounted for 65%.

In the opinion of 90% of judges, doctors have to be sued in case of medical malpractice regardless the

seriousness of their wrongful deed. Such an opinion is very severe, since doctors are human being, so they are likely to fail.

Like law, the medicine is an inexact science. One cannot predict with certainty an outcome in many cases. A doctor is not necessarily liable in all cases where a patient has suffered an injury. Doctor is liable for only those that are a consequence of a breach of his duty [13].

For 45% of judges, there is no need to perform medical expertise in the trial of doctors. This way of reasoning is erroneous, because only doctors can prove the mistakes of their peers. Doctors' legal responsibility arises when there is something wrong with medical care. Veselic [8] found in his study that the mistakes most frequently occur in the field of diagnostics and additional health care (42%), in performing a surgery and post-operative complications (43%) and in the field of gynecology (15%). With the development of medicine and technology the risks and medical mistakes are ever growing.

Judges are not experts in medical science; rather they are laymen [13]. So, they need a second opinion, particularly the one of a medical expert.

In our study, 11 (55%) judges asserted that medical expertise is necessary in the trial of Doctors; among them 20% (n=4) said it is always necessary; while for 35% (n=7) it is sometimes necessary.

Among the 7 judges who recognized that medical expertise is sometimes necessary, 5 asserted that it is necessary during criminal trial, while 2 of them claimed it is necessary in all trials.

Normally, the opinion of medical expert is of utmost importance in order to avoid sentencing unfairly medical personnel. For Paukovic [14], one of the crucial instruments in the establishment of a presumed civil liability of physicians as well as in the establishment of the criteria for the assessment of a proper award, is the medical expert testimony utilized as an essential proof.

The confusion of the different types of doctors' legal responsibility can bring bias in lawsuit and infringe the rights of doctors, since the legal consequences vary accordingly.

Criminal law defines offenses against the community at large, regulates how suspects are investigated, charged, and tried, and establishes punishments for convicted offenders. In a criminal case, the state, through a prosecutor, initiates the suit. Persons convicted of a crime may be incarcerated, fined or both. Criminal law has the added objective of seeking to achieve deterrence and retribution through punishment [15].

Civil cases involve individuals and organizations that seek to resolve legal disputes. In a civil case the victim brings the suit. Persons those who are found liable in a civil case may only have to give up property or pay money [16].

There are two opposed trends in the criminal prosecution of doctors. Proponents of criminal prosecution rely on utilitarian and retributive theories of justice to rationalize their position. Utilitarians believe criminal sanctions are appropriate when punishing negligent conduct because prosecution encourages all individuals to conduct themselves with more caution. Those who oppose criminally punishing negligent medical conduct argue that a just criminal system should only punish those who have voluntarily committed a wrong [17].

CONCLUSION

Judges were kin to suit Doctors in 90%. Some of them found medical expertise necessary in the trial of medical personnel but others said there is no need to perform this investigation. In one hand, doctors need to be more cautious but in other hand, judges must avoid sentencing medical personnel without prior expertise.

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