

Criminal law

Law



SHOULD MEDICAL MISDIAGNOSIS BE A CRIME? [An essay on the dynamics of law and medical (mal)-practice] of (affiliation)

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SHOULD MEDICAL MISDIAGNOSIS BE A CRIME?

1. I do not fully agree with the opinion of the general counsel of AMA, Atty. Johnson, that the elements of willfulness or intent (actus reus) and knowledge (mens rea) must be present in order for a physician to be charged criminally in a murder case. Doctors and physicians are supposed to exercise the best care possible when handling their patients, including ensuring that a correct diagnosis has been made with regards to the results of laboratory tests and physical examinations, for example. If a patient dies due to medical misdiagnosis as the proximate cause, then it is a clear case of medical malpractice resulting from negligence for which a liability is attached. A mere revocation of license is not enough to compensate for the preventable death of a person caused by professional negligence resulting from a failure to extend the standard of care and treatment expected from established benchmarks of adequate medical practice (McClellan, 1994) and Kirk Johnsons position is quite understandable as he is lawyering for the AMA. (170)

2. I think that a doctor who caused serious harm due to fatigue, overwork, lack of sleep, inattention, or for any reason should still be held criminally liable because the patient relies on him completely. Although a physician is expected to heal and not to cause harm per their oath, again it is the standard of care that sets the benchmark of what is considered as adequate

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medical care, including being physically and mentally fit to give or render the expected care that patients want from health care providers. If a doctor is to be allowed the various defenses enumerated earlier, then there is no assurance anymore that patients get the standard of care they deserve. If a doctor feels tired and thinks he cannot perform in any safe manner, then he or she should refrain from practice to avoid a case similar to anesthesiologist Dr. Verbrugge, Sr. (Carlson, 1995).(151)

3. Some of the professions whose members can be held liable for negligence include the police such as not taking good care of suspects while in their custody, lawyers who are ignorant of the law and therefore also considered to fall under the definition of being negligent in their legal practice, teachers who failed to safeguard the students while they were in school, and firefighters who may have failed to save a potential fire victim due to some inadequacies or plain incompetence when they could have saved that person if they were not remiss in their duties. A school teacher is considered as a second or foster parent while the child-student is in school and is expected to care for that child like what a good parent should and if anything happens to him (the student), then the teacher can be indicted for homicide or other crimes due to negligence. A profession which normally requires care but then the member of that profession fails to take any reasonable care that results in an accident which cause harm or injury or even death can then be considered negligent if that accident was the proximate cause of the harm, injury or death. (201)

4. If ever I happen to sit as a jury member in a trial involving negligent homicide against a physician, the preconceptions I have are what caused this incident in the first place and what is the proximate cause? In addition, I <https://assignbuster.com/criminal-law-essay-samples-7/>

would also probably consider the liability of that physician if he had any similar prior cases in the past which other jury members may not see or even consider, thinking that a physician will automatically uphold the value of life. It may not always be the case as there were instances of doctors doing intentional harm to their patients for whatever reason only they knew like Dr. Crippen of Great Britain back in 1910 convicted of murder (Aston, 2005). The intent of imposing criminal liabilities in medical negligence cases is to ensure doctors do their best when lives are at stake (Wallace & Roberson, 2005).

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