



Medical Malpractice

by John D. Whitaker

I ran into some old friends the other night at a charity function. I had not seen this couple for many years, and it turns out that they are in the business of selling medical malpractice insurance to physicians here in Wyoming. Given my line of work the discussion quickly turned to the increasing cost of malpractice insurance for our physicians. Although we clearly see this issue differently, our spirited discussion was respectful and friendly. My friends made the argument that when you seek medical care and you get a bad result it does not necessarily mean that you were the victim of malpractice. Sometimes bad things happen to good people. This is a fair point, and I think it is vital to understanding the current debate. So, the question is: What is medical malpractice?

Simply put, to prove a medical malpractice case you must prove that two things happened. First, you must prove that the doctor made a mistake that no other reasonable doctor would make. Second, you must prove that the doctor's mistake caused an injury. Let's look at each element individually.

The first element requires an analysis of what a reasonable physician should do in any given situation. There is a generally accepted way for a physician to go about diagnosing and treating a medical problem. This is called the standard of care. If the physician makes a mistake and does not treat the patient in a way that other reasonably competent physicians would treat the patient he violates the standard of care. The problem with this element comes from the fact that reasonable physicians may not only disagree



as to what they believe the applicable standard of care to be, but they also can disagree on whether the physician's conduct violated the applicable standard of care. Proof of this element requires expert testimony, and is disputed in nearly every case.

Even if we assume a mistake was made, there must also be proof that the mistake caused injury. This is commonly called the element of causation. If, for example, a physician fails to properly diagnose a condition that a reasonable physician should have found, he may still not be responsible for a bad result unless his mistake caused the bad result. This element can be

complicated by the fact that when we go to see a physician we are generally sick already. The physician did not make us sick. So if we were likely going to suffer the problems associated with our sickness anyway, a physician's mistake may not have changed our outcome at all. If that is the case, then there is no actionable malpractice.

Sometimes people get sick and die under the best care in the world. It is not fair to demand a perfect result when we go to our physicians. All we can expect, and all the law will require, is that the physician provides reasonable care. If on the other hand we go to a physician and he makes a serious mistake which results in injury, his insurance company should step up and provide fair compensation.

I am happy to report that my friends and I were able to agree on this proposition. My only suggestion for the current debate between doctors, lawyers and insurance companies is that we drop the adversarial attitude and approach this very serious problem facing our state like old friends getting together to do the right thing.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.