

# ALTERNATIVE VIEWPOINTS

## When Does a Malpractice Error Become a Felony?

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Last week was the first time I heard of the case of Eric Cropp from Cleveland, Ohio. He was a staff pharmacist at a Rainbow Babies and Children's Hospital and made a significant dispensing error in 2007. He was charged with manslaughter and last year was sentenced to 6 months in prison, 6 months house arrest, 3 years of probation, 400 hours of community service, fined \$5,000 and payment of court cost. The Ohio State Board of Pharmacy permanently revoked his pharmacy license. The error involved a calculation error made by a technician (and not caught by Mr. Cropp) with normal saline solution for a chemotherapy infusion (instead of 0.9% the calculation error resulted in a 24.3% sodium chloride solution). The error resulted in the death of a two-year old child with cancer. This is clearly a tragic, unacceptable and disturbing dispensing error.

Let me say I'm neither a lawyer nor a bioethicist. In fact, I'm not even a traditional pharmacist (my wife and step-father are much better pharmacists than I am, as they fill hundreds of prescriptions a day, while I simply do cancer research in a laboratory). However, with that said, I was struck with the question "when does an medical malpractice error justify criminal charges?" If the error were egregious (but not malicious) and resulted in death, should we expect criminal charges? Or are criminal

charges only to be feared when the prosecuting lawyer has something to gain?

Initially, I wanted to determine how many other healthcare providers have been charged with felonies for malpractice errors. It turns out there are only three other criminal cases in the United States I could identify.

### Malpractice Errors Prosecuted as Felonies

#### 1990—New York Physician

Dr. Einaugler was the on-call physician at a nursing home where a 78-year-old female with end-stage renal disease, cardiovascular disease, diabetes mellitus, retinopathy, and organic brain syndrome was fed through her peritoneal dialysis catheter instead of feeding tube. Dr. Einaugler monitored her progress throughout the morning and admitted her to the hospital that afternoon. The 10-hour delay in her hospital admission was viewed as "reckless endangerment and willful neglect" by a jury, and Dr. Einaugler was convicted and sentenced to 52 weekends in the New York state prison, Ricker's Island.<sup>1</sup> After serving six weekends the Governor of New York commuted his sentence.<sup>2</sup>

#### 1998—Colorado Nurses

Three nurses from Colorado were charged with criminally negligent homicide after an infant's death. The pharmacist dispensed a dose of penicillin G benzathine 10 times that of what the doctor prescribed, but labeled the route of administration as IM. The primary nurse was concerned about the amount of medication to be given IM because of the amount of times she would need to inject the infant. She consulted other nurses. The nurses were said to have

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checked the route of administration in multiple references but did not contact the physician or the pharmacist. The medication was given intravenously, and three hours later the infant died of a pulmonary embolism caused by IV administration of penicillin G benzathine. Two nurses pleaded guilty and received no jail time, while the third nurse pleaded innocent and was acquitted.<sup>3</sup>

#### 2006—Wisconsin Nurse

An experienced obstetrics nurse was working an extra shift when a pregnant 16-year-old girl was in the hospital to have labor induced. An intravenous antibiotic had been prescribed for her infection, but the nurse mistakenly gave an epidural anesthetic, bupivacaine, instead of the antibiotic. The patient died, but the baby was delivered via C-section. The nurse was charged with “criminal neglect of a patient causing great bodily harm,” a felony offense. She pleaded “no contest” to two misdemeanors and the felony charges were dropped.<sup>4</sup>

#### Discussion

One can clearly justify criminal charges if a physician is prescribing narcotics for inappropriate abuse, the cardiologist using propofol for sleep outside a hospital, or a pharmacist cutting the dose of chemotherapy in order to increase profits within his retail pharmacy. I can rationalize these in my mind as felonies. However, do all medical malpractice cases that result in death still justify a criminal charge? I can remember five significant pharmacy errors that resulted in tragic deaths at major medical centers over my professional career. None of the healthcare providers involved were charged with felonies (although some lost their license). Their institutions and the profession learned from the errors and altered their operational systems to prevent future dispensing errors.

Mr. Cropp stated that he was overworked the day the error occurred and the computer system had gone down earlier that day. I see this constantly; hospitals/pharmacy departments cut costs with no expectation that the quality of care will be altered. IT systems fail and we expect staff pharmacist to catch up. If there are staffing problems, at what point should hospital administration/pharmacy directors be held responsible for a malpractice fatality? It is easy to make the dispensing pharmacist the scapegoat

and ignore the impact leadership decisions may have on an error. With that said, human errors will occur at some point if humans are involved in the logistic procedures no matter the quantity of workflow.

How are we as a pharmacy community going to deal with the risk of criminal charges for malpractice errors in teaching our students? I'm not sure scaring students is the best route. Nonetheless, they need to know and understand the risk of a malpractice error. At what point do we expect dispensing pharmacist to simply fill X number of prescriptions per 8 hours, and if the daily orders are heavier than that reasonable number of prescriptions, they simply refuse because there is a chance they might have to cut corners which could result in an errors.

#### Conclusion

I'm concerned about this trend and surprised I haven't heard an outcry from our pharmacy leadership (although the Institute for Safe Medication has come out strongly against criminal prosecution as a means to prevent malpractice errors).<sup>5</sup> This “risk” is going to alter the staff pharmacy landscape, and in my view won't prevent future malpractice errors. Has prison time for this pharmacist made society safer? (Albeit “Emily's Law” was passed because of this error in Ohio requiring qualification procedures for all pharmacy technicians.) Have hospitals changed their operational procedures because of lessons learned from this tragic error? I understand revoking professional licenses for significant malpractice and I understand some degree of malpractice lawsuits, but manslaughter is hard to justify for non-malicious human medical errors.

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