The Society for
Medicine and Law in Israel

Journal of Medicine and Law

Volume No. 46 – July 2012

www.ismal.co.il

Professional Liability of the Pregnancy Termination Committee

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Abstract

By Israeli law the termination of a pregnancy is permitted only by the Pregnancy Termination Committee and only for medical reasons concerning the fetus or the mother.

This paper deals mainly with the termination of pregnancy in the third trimester; i.e. beyond week 24 – the so-called "viable stage."

The legal status of the Committee will be examined, mainly as to the tort liability of the Committee members, particularly when refusing to approve a pregnant woman's request to terminate her pregnancy.

In the paper, a thorough review of the guidelines and standards of the Committee's practice is suggested. The lacunae in the relevant primary and secondary legislation on this subject are reviewed and several amendments are suggested by way of comparative law concerning similar problems in several legal systems.

It must be stressed that the concept, as well as the actual existence of a Pregnancy Termination Committee is unique to Israel, which renders real comparison with other countries impossible.

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Why Don't You Acknowledge Me? Conventional v Complementary Medicine

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Abstract

Though complementary medicine has gained popularity in recent decades and the number of referrals is rising, it has never been legally acknowledged. This created a situation in which anyone can undergo a short training period, receive a professional diploma, and offer treatment. The quality of care is not monitored, therapists are not supervised, the field is unrestricted, and thus public health is at risk. Attempts to regulate alternative medicine over the years have been unsuccessful.

This article attempts to examine the reasons why complementary medicine has not yet been regulated despite the urgent need, dividing them into two types: overt and covert reasons. The overt reasons have been describes and discussed in different forums, are thus public knowledge. The covert level is there because conventional caregivers rarely discuss the issue, while such discourse exists mainly in complementary medicine circles.

The general attitude of Western medicine is one of existential struggle against the threat of alternative medicine. An analysis of this threat led me to conclude that, fearing for and protecting its status, the medical profession is strongly interested in preventing the regulation of complementary medicine and thwarting the progress of its recognition.

Fighting against complementary medicine, conventional medicine professionals mainly employ appropriation. Yet, by appropriating areas of complementary medicine, they are both promoting its authority and preventing it from making

progress in the professional hierarchy. Alternatively, the legal regulation of complementary medicine can actually enhance the status of the medical profession, and benefit both sides.

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Ethical and Legal Issues of Privacy and Patient Rights in the Application of Healthcare Information Delivery Systems

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Abstract

Large volumes of medical and personal data are stored in medical records that are processed and distributed by electronic means, making them accessible to a large number of users and enabling the generation of profiles of patients and their relatives. The result is a rapidly-evolving onslaught on valued personal private realm and the individual's rights. Different societies offer partial legal solutions to this onslaught, but privacy is a moving target whose legislative management is (almost) always late to respond to events.

We review the ethical and legal aspects of privacy and the pursuit of patient's rights in healthcare delivery systems. We address the fundamental issue of medical information ownership, the rights it delegates to related parties (such as patients, physicians, medical providers, hospitals, communities, and the public), and the recognition and implementation of these rights by the legal and regulatory systems of several countries. We propose several measures that can enhance and standardize the protection of privacy and patients' rights.

Keywords: privacy, ethics, patient rights, patient consent, patient information, patient data management, patient data ownership, medical data ownership, information technology application, medical record management, electronic medical record, healthcare delivery, healthcare management.

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Privatization of the Judiciary: Should Medical Experts Rule in Cases of Minor Bodily Harm?

Asaf B. Posner*

Abstract

Several billsthat wish to shorten the duration of legal proceedings have been submitted recently. This article addresses one such bill according to which, the hearings of cases involving minor bodily harm caused by car accidents shall be transferred from judges to medical experts. According to the proposal, medical experts will define the extent of the physical injury and then – without cross-examining experts – a court registrar will quantify the damages. The article argues that the proposal ignores fundamental differences between expert and judicial decisions. While judges rule on functional disability (which defines most of the damages paid), trained experts determine the extent of medical-scientific disability, which is of little importance. Furthermore, while experts can submit opinions on medical-scientific causes, courts follow legal rules that may show causality despite scientific uncertainty. Additionally, deferring decisions to court-appointed experts ignores a major problem: experts decide according to the school of thought they follow and disregard damages that would have been approved by experts of different schools. Lack of cross examination means that this problem might be overlooked. The proposal further disregards the traditional role of courts in setting facts and ruling on the credibility of witnesses. The article also argues that this proposal discriminates against plaintiffs: If the result of the medical opinion does not favor the insurer, that party shall have the right to a full hearing, while when it is unfavorable to the plaintiff, it is considered final. The article also mentions constitutional problems regarding to the privatization of the judiciary and the access of courts. The article further doubts that time is being wasted in cases that actually involve minor damages.

Key words: Access to justice, car accidents, medical experts, medical disability, functional disability, causation, medical schools, cross examination, privatization, equal treatment.

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Research Bias and Expert Opinions in the Legal Process

Jonathan Davies*

Abstract

The writing of an expert opinion for legal purposes is a judicial process in which a non-legal expert attempts to influence the outcome of legal proceedings. Expert opinions are presumably objective and based entirely on the expert's credibility, experience, and knowledge. The opinion of a medical expert should be supported by medical evidence and data collected according to EBM (Evidence Based Medicine) rules, and rely on published medical literature, scientific textbooks, and journals.

Yet, an expert opinion is also influenced by unconscious or cognitive bias, which might influence the outcome. Therefore, contractual relations between interested parties and experts create built-in conflicts of interests between the experts' loyalty to those parties and their duty to maintain professional objectivity. Biased research might also influence and negatively impact on experts who rely on misleading publications.

In the Israeli legal system, expert opinions play a crucial role particularly in medical malpractice cases. This paper wishes to examine how bias affects medical literature or research and how it might influence court decisions. We try to examine what lies behind the desire to influence expert opinions and how biased opinion can influence the results of a trial.

We support our arguments with examples of several cases in which attempts were made to influence research and show how bias impacts on legal proceedings. Also, we examine how ethical institutions – such as the Ministry of Health and the Medical Association – handle this phenomenon. Finally, we suggest a simple mechanism to minimize the fear of conflict of interests and structured cognitive bias when appointing court experts in malpractice suits.

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Jewish or Western Bioethics

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Abstract

The relatively young society of Israel has a long tradition of bioethics that is rooted in the Jewish tradition. At the same time, Israeli medicine is an integral part of modern Western medicine, and is influenced by the processes of globalization and rapid communication of our era. The interaction between these factors has yielded a unique set of Israeli bioethics.

This paper examines some of the differences between the accepted norms of the Western world and those of the Jewish tradition, the principles underlying these differences, and the manner in which Israeli medicine attempted to find a unique approach that respects and integrates these varied and sometimes conflicting views.

We believe that a healthy balance between and an integration of the positive elements of the Jewish tradition and the important values of Western democracy has been created in Israel.

Key words: Israeli bioethics, Jewish tradition, democratic values, sanctity of life, patients' rights, end-of-life care, euthanasia.

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Sexuality in Psychiatric Hospitalization and Rehabilitation Settings: Ethical Aspects

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Abstract

While the right to sexuality is fundamental, it presents those coping with mental illness in hospital and rehabilitation settings with challenging professional and ethical dilemmas. At some level, the nature of these diseases often negatively affects the patients' ability to judge and express an autonomous wish. In view of this, we ask: Is the wish for the realization of the right to sexuality a result of a calculated opinion? Is there no danger of exploitation? This article attempts to deal with the issue and urges the consideration of a reasonable policy that would carefully find the balance between the right to

sexuality, the ability of free choice of those coping with mental illness, and the limits of responsibility and intervention on the part of the therapeutic and rehabilitation teams.

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The "False Memory Syndrome" When Does a Thesis Become a School of Thought?

Nadav Gabay*

Abstract

In recent years, the False Memory Syndrome thesis has become a "hot topic" in the psychological-psychiatric community in the United States and lately in Israel. In this article, I shall review judicial and scientific material according to which the scientific-psychological discussions (or clash) – and subsequently, judicial debates – are far from over.

Regarding the recently concluded **John Doe** case, this thesis was discussed on its merits, subverting the popular approach, which is familiar with the well-known phenomenon of repression among incest victims. This thesis claims that a full repression of traumatic events is impossible. Hence, memories of sexual abuse that surface suddenly, many years after the incident, originate from the plaintiff's inner suggestion or are externally prompted by a therapist. In the matter of **John Doe**, Supreme Court Judge Amit set important parameters for diagnosing a "planted memory" and demanded high evidential standards in such cases.

In this article, I wish to examine whether the manifestation of the thesis as a counterargument is enough to uphold "reasonable doubt." When the counterargument is presented – does the prosecution need to uphold graver evidential standards than those defined by legislation, even to the point of an underlying requirement for corroborating evidence?

I claim that this requirement reflects several problems: First, lack of evidence in cases of sex offences in general and incest cases in particular is an acknowledged deficiency. Second, as mentioned, dissociative amnesia ("repression") is also a well-known and popular medical-psychological phenomenon in such cases, and has been researched and even manifested in legislation and ruling.

This topic holds many aspects that are worthy of discussion, such as the place of the victim in the criminal process; the limitations of the scientific-legal discourse; and a factual truth v judicial truth - though I shall not elaborate on the remaining questions, and they remain unanswered.

Key words: False memory syndrome, Loftus E.F, incest cases, recovered memories, implanted memories, repressed memories, reasonable doubt, expert witnesses, scientific evidence

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Psychiatry and Law in Palestine: A Case of Murder and Psychiatric Expertise behind the Times

Jacob Margolin,* Eliezer Witztum**

Abstract

The paper describes a murder case that was handed down by Palestine Courts in 1925, prior to the establishment in 1948 of the State of Israel. The case and the judicial procedures were extensively covered by the media at the time, as were psychiatric analyses by two professionals. The details of the case and the testimonies are described, including the murderer's psychological analysis as written by the two experts immediately after the trial. The paper then presents an up-to-date interpretation of the defendant's mental state, emphasizing the differences between contemporary and early 20th century mental health concepts.

Key words: Criminal law, homicide, legal defenses, insanity, expert opinion.

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Physical Integrity and Family Unity: Minors' Right to Medical Autonomy in Conflict Situations

Reut Oshry*

Abstract

The Israeli Legal Capacity & Guardianship Law – 1962 restricts parental authority over minor. Parents may give medical experts their consent to perform all forms of medical treatment on minors they are in charge of even without consulting them. This is particularly important when a conflict occurs between parents and minors, between pairs of parents/guardians, or between parents/guardians and the medical teams involved. In such a conflict, a suitable court of law may be asked to intervene.

This paper argues that minors should be accorded some measure of medical autonomy to solve such conflicts; the least of which should be considering their wishes, i.e. their rights, in two situations: when minors are forced to receive treatment, and when they are coerced into undergoing medical procedure to help another person. These cases should be reviewed within a medical, legal, and ethical framework. The following will be discussed: the distinction between the donation of renewable tissue and donation of essential organs; the distinction between the relationships and the relevance of the minor's age; the penal and the religious "Good Samaritan" rule, and its applicability to minors; the use of planned pregnancies induced as a source of compatible tissues or organs; the use of medical procedure on a minor for the benefit of another when no conflict exists.

The main purpose of this paper is to establish criteria so as to create a model for minors' involvement in medical decisions that might be critical for their health, while considering all the relevant elements that may affect the minors in the present and in the future.

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Principles and Issues in the Evaluation of Parental Competency in Israel's Arab-Muslim Community

Emad Gith*

Abstract

For Arab Muslim citizens of the State of Israel, the Islamic religious court (the *Sharia*) is the legal body authorized to deliberate and rule in cases involving child custody, adoption, and guardianship. Under *Sharia* law, mothers have custody of boys and girls until ages seven and nine respectively, after which they are transferred to the custody of their fathers. In the absence of a father, children are transferred to the custody of their grandfathers.

The *Sharia* court is asked to rule in cases of parental competency, and to do so it commissions a professional psychological assessment of parental competency. Since it is culture-dependent, this assessment notably involves a number of professional and ethical issues, while addressing the following facts: the Arab civilization is a collective consisting of clans (*hamulot*); men's status is higher than women's; and the parental duties of fathers and mothers are very different.

Since psychological evaluation of parental competency refer to general diagnostic data and authorized tools, they are not tailored to match the Arab population. Almost all psychological services and mental health centers employ psycho-diagnostic tests that, among other things, test for the general level of intellectual performance. Yet, most examiners agree that they must rely on their own experience and professional skills in order to determine the etiology of a case or reach a diagnosis that reflects the inner emotional or intellectual reality of a subject. Since the model for evaluating parental competence in Israeli society in general is culture-dependent, it is not practical for the Muslim community. Therefore, there is a need to construct an evaluation model that addresses this issue. Such a model must be based upon the principles of *Sharia* law, take social differences into account, and provide psychological tests that are tailored to the cultural context of Muslim Arabs in Israel.

Key Words: parental competence, psychological assessment of parental competence in Muslim Arab society in Israel, *Sharia* courts and determination of child custody, child custody in Muslim society in Israel, divorce in Muslim society in Israel, *Kitab*, *Sunnah*, *Ijma*, *Madhab*, *Quias*.

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Thoughts on Joint Custody: Legal Arrangements in Parental Separation or Divorce

Moshe Zaki*

Abstract

In the past and in traditional families, mothers were in charge of satisfying children's needs. Additionally, psychological attachment theories emphasized the importance of the mother-child relations for the children's mental development. Thus, the law prioritized mothers' rights in cases of early childhood custody.

In modern times, fathers are more actively involved in satisfying their children's needs. Recent researches have shown that mothers and fathers together contribute more to the best interests of the child than sole custody. Thus, in present-day Israel, judges in divorce trials tend to opt for joint custody arrangements.

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Joint Custody - Psychological, Legal, and Social Perspectives

Daniel Gottlieb*

Abstract

In recent years, Israeli courts have been increasingly considering joint custody as a solution for children's time-sharing settlements in divorce cases. The rather spirited public debate over joint custody follows a broader debate on the relative status and power of men and women in the Israeli society, particularly within the context of domestic relations law. This article reviews the way the joint custody conscept is treated in the psychological literature, in American law, and in Israeli legislation and case law. Presenting arguments for and against joint custody, this article reexamines some of the prime arguments against it, and suggests that the suitability of joint custody be examined case by case, while considering the "child's best interest" standard .

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On Pharmacists' GMP Regulations
A Milestone in Regulating the Quality of Drugs

Segev Shani,* Zohar Yahalom**

Abstract

In 2008, the Israeli legislation was amended and for the first time includes regulations on monitoring the quality of medicinal products. Before these regulations were enacted, drug inspections were based on the general power of the Pharmacists Ordinance and the Ministry of Health SOP's. The new regulations are the end result of negotiations between

the Israeli Ministry of Health and the European Community on a mutual GMP-recognition agreement in which, Israel was required to amend its legislation so as to match the relevant EU directives.

One of the most important changes the regulations introduced is the transfer of responsibility for the release of imported drug batches from the Ministry of Health to the importer's Responsible Pharmacist ("Qualified Person"). Another notable change the application of these regulations to drug importers, and a significant expansion of the inspection tools granted to the Ministry of Health to ensure the implementation of the regulations.

Key Words: Drugs, Quality, Quality Assurance, GMP – Good Manufacturing Practices, Importer, Batch Release, Qualified Person (Responsible Pharmacist)

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