Younger Physicians Understanding of the Conspiracy of Silence

By

Christian Flint

Director: Dr. Chris Gurrie

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Abstract

The conspiracy of silence is a phenomenon believed in the law community involving physicians remaining quiet and not testifying against other physicians in medical malpractice cases. Existing research shows that physicians hesitate when asked to testify against each other in a court of law. Five physicians aged 25 to 30 were interviewed over Zoom and were asked questions regarding the ethics of testifying and their stances on the subject. The researcher hypothesized younger physicians will have a different view on the ethics of testifying than older physicians in that they believe younger physicians do not respect their elders as much as the previous generation. The results reflect that these young physicians did not have a strong education on malpractice law from their medical schools and are most likely to not testify against another doctor in a court of law due to the harm of their relationships with fellow physicians. This study suggests researchers should take note of the small sample size and the lack of diversity for future research. A larger sample size would draw a stronger conclusion.

Literature Review

The conspiracy of silence is a phenomenon believed and discussed in the law community involving physicians remaining quiet and not testifying against other physicians in medical malpractice cases. This is an issue in the law field because without the local doctors in the hospital testifying against their colleagues, the case can become more difficult. A physician's testimony against another doctor can be the deciding factor in a case and can benefit the plaintiff significantly. On the other hand, while doctors protect each other the medical field is not improving because these doctors are getting away with their incompetence and negligent care. The goal is to not do harm to any patient and if the conspiracy of silence is true then all doctors involved are guilty. This research project will explore younger physicians' understanding of the conspiracy of silence and their feelings about testifying against another doctor in a malpractice case.

According to the American Board of Professional Liability Attorneys, medical malpractice occurs when a hospital, doctor or other health care professional, through a negligent act or omission, causes an injury to a patient (American Board of Professional Liability Attorneys, 2020). The negligence might be the result of errors in diagnosis, treatment, aftercare or health management (American Board of Professional Liability Attorneys, 2020). It is also discussed in order for a claim to categorize as malpractice, the claim must have the following characteristics: a violation of the standard care, an injury was caused by negligence, and the injury resulted in significant damages. The American Board of Professional Liability attorneys lists examples of malpractice such as failure to diagnose or misdiagnosis, misreading or ignoring laboratory results, unnecessary surgery, surgical errors or wrong site surgery, improper

medication or dosage, poor follow-up or aftercare, premature discharge, disregarding or not taking appropriate patient history, failure to order proper testing, and failure to recognize symptoms (American Board of Professional Liability Attorneys, 2020). All of these are serious issues with serious consequences. Any physician who has witnessed another doctor involved with any of these examples should feel obligated to speak up and help those who have been harmed in these cases. In fact, physicians are technically obligated to help those who have been harmed because it is part of every doctor's ethical code (American Medical Association, 2021). Furthermore the hippocratic oath vows one shall do no harm to a patient, and so on (American Medical Association, 2021).

In the American Medical Association Code of Medical Ethics, there are nine core principles. The second principle states a physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities (American Medical Association, 2021). The conspiracy of silence directly violates the second principle of the AMA Code of Medical Ethics. If this conspiracy is true and doctors are being silent it is unethical. Ethics might be the most important value to have as a medical professional when the main goal is to provide healthcare for individuals who need their help. Again, even though the other physician is not being sued for malpractice, if they are aware of negligence, he or she is just as guilty.

Author Mark Friedman claimed the medical board enforces the conspiracy of silence and has evidence supporting his claim (Friedman, 2010). There was a case in 2008 involving a denial of the return of Dr. Lonnie Harrison's license by the medical board because of his involvement in

aiding a plaintiff in a malpractice case against another doctor. Harrison has a criminal background as a doctor involving a charge of possession of methamphetamine. In 2002, he pleaded guilty to the charge and his license was revoked (Friedman, 2010). Following his sentence, Harrison tested drug free for five years and in 2008 the case was expunged and the record was sealed (Friedman, 2010). While Harrison did not have his license during his 5 year gap, he helped an attorney by testifying against another physician in a malpractice case in 2003 (Friedman, 2010). Harrison requested a limited license to return to a practicing physician and was rejected. The medical board stated that several board members expressed concern about the fact that Dr. Harrison assisted a plaintiff in a medical malpractice case against another physician (Friedman, 2010). Furthermore, Dr. Harrison's involvement with plaintiff's counsel showed a major character flaw that could influence his professional medical judgment (Friedman, 2010). After filing suit Harrison was granted his temporary license (Friedman, 2010). This case demonstrates the bias in the medical field against physicians testifying against one another. More importantly, this case shows the highest level of the profession enforcing the conspiracy of silence. This case shows evidence of the conspiracy of silence.

In addition, when looking globally, Canada appears as an affected country. Brown discussed the tremendous issues of the conspiracy of silence affecting Ontario in the 1960's and only one doctor attempting to make change (Brown, 2021). Dr. Morton Shulman brought light to the fact a lot of doctors routinely covered up their errors. Dr. Shulman attempted to expose these doctors for their lies and other doctors knowing about these issues as well (Brown, 2021). Dr. Shulman demanded change as there should be improved healthcare for patients and because of the media attention, the public's trust in the profession declined (Brown, 2021). This was

damaging to doctors' reputations. As the attention increased it was evident change had to be made. Many physicians denied all the accusations and were offended that their expertise was being criticized (Brown, 2021). In conclusion, the medical board protected their doctors and did not benefit the patients and did not improve healthcare (Brown, 2021). This is another case of higher medical authorities siding with their own physicians.

One theory for this research is that younger physicians will be more ethical and be more likely to testify against colleagues rather than older physicians. The older ideology of not disrespecting colleagues and respecting elders might not have carried over to the next generation. A research team involved 20 newly graduated medical students and were interviewed for 30 to 45 minutes (Self, 2003). During the interview, subjects were asked specific questions to get a deeper understanding of their moral orientation. The goal was to see which subjects focused on justice, care, or an alternative method as a mode to resolve conflict. The results found that, 95% saw justice used in conflicts but only 20% predominantly uses justice in resolving conflict (Self, 2003). Relating to malpractice cases and testifying against colleagues, it is hard to say how these new professionals will turn out. Testifying against colleagues and possibly friends can be extremely difficult and the ultimate ethical dilemma.

In addition, the subjects interviewed for this research are going to be freshly graduated medical school students. In order to ascertain the younger perspective, the subjects were asked about their knowledge of malpractice learned in medical school. Also, if they were taught to testify against colleagues when they see negligence while in medical school. In one study, researchers investigated the legal liability and ethical responsibilities medical students, doctors, and hospitals face when students are learning in hospitals (Oh et al., 2016). Oh analyzed 152

cases from 1899 to 2015 involving keywords "malpractice," "student(s)," "medical student(s)," "liability," "violation(s)," and "ethics" (Oh et al., 2016). The findings linked 90% of cases were surgical issues (Oh et al., 2016). The main problem with students was the inappropriate decision making authority given to students, 40% of cases (Oh et al., 2016). Other issues involved the failure to supervise students and the failure to disclose their status as medical school students to the patients (Oh et al., 2016). This study shows that before they are certified doctors, students are still liable. Medical school students should be taught about malpractice, liability and ethical responsibility. There is no current research on students' awareness of the conspiracy of silence.

In another study, scholars examined the fear physicians have of litigation which creates an issue in malpractice cases (May & Aulisio, 2001). There is also evidence when communication is clear and honest between the physician and the patient, patients are 80% less likely to file suit (Avery, 1985). Other research shows 43% of the malpractice cases studied were motivated by suspicion of the doctor hiding information and the plaintiffs wanted revenge (Hickson et al. 1992). With honesty and openness that would eliminate 43% of people filing action. It seems as if the doctors' own paranoia and stress causes malpractice cases when they are worried about errors instead of being honest with their patients about them.

In regards to reporting errors, which is the ethical and correct thing doctors must do for their patients, studies have indicated questionable trends. According to the Institute of Medicine Report, most errors and safety issues go undetected and unreported, both externally and within health care organizations (Kohn, Corrigan & Donaldson, 2000). This could either mean the physicians are blatantly ignoring the errors or are actually not seeing them which technically is not unethical, it is a mistake. In addition, the lack of reporting errors to patients adds to the fear

physicians have of litigation. For example, according to a study conducted on residents, researchers found that only 50 percent of the residents reported errors to their attending physicians, and less than 25 percent informed the patient or the family (Wu et al., 1997). Furthermore, another reason physicians tend to not disclose their errors to patients is because the information will make patients unduly anxious (Baylis, 1997). The withholding of information is wrong and needs to be a part of the open communication between the patients and doctors. The previous study indicated that doctors are less likely to have malpractice cases filed against them when they are honest and open with their patients (Baylis, 1997). If the doctors and residents were shown those statistics, maybe it would change their tendencies of reporting errors.

On the other hand, malpractice cases are very serious causing doctors plenty of stress for good reason. Furthermore, the threat of malpractice litigation is associated with psychological feelings of extreme stress and shame even at an anticipatory level, for those who have not yet experienced a malpractice suit (Martin et al. 1991). The pressure is high in these situations and can be understandable when not reporting errors, but this does not improve the medical field. This high pressure relates to the probability of a patient winning a medical malpractice trial relates to the severity of the injury (Liang, 1999). If the injury was minor the doctors are more likely to be open with reporting the error than if it was a serious injury. The consequences are great and as long as the legal rules of malpractice stay the same, the trend of hiding errors will remain the same. Now with all of the fear of litigation and statistics involved, research shows litigation might not even be helping the medical field. A Harvard study researched approximately 32,000 patients hospitalized in New York in 1984 (Localio et al., 1991). Localio researched the malpractice claims and events that could have been malpractice claims that were left unnoticed.

Also, these claims and events were analyzed to see if the medical field is improving with litigation and patients are getting the proper care and compensation they deserve. Localio states, "Our results . . . raise questions about whether malpractice litigation promotes high quality in medical care." (Localio et al., 1991). The researchers suggest that these errors are not because the physicians lack care for their patients. The mistakes could potentially be avoided if there was a better system in place to recognize the errors. Since this research found a majority of mistakes are from systematic errors and not from negligence, it is unfair to assume every physician is unethical when not reporting errors, especially if they are genuine mistakes.

In conclusion, the research supporting the conspiracy of silence shows there is proof it is real. The several research articles and journals also contribute to the unethical practices physicians partake in by not reporting their errors or being open with their patients due to fear also shows a silence used in the medical field. The case of common mistakes due to systematic errors will be taken into consideration since the reason for not disclosing was not intentional. But, the research for this study is to focus on the silence due to choice in the medical field and the conspiracy that doctors do not testify against other physicians when they indeed know what is happening is malpractice.

Methodology

The researcher interviewed five new doctors (between one and three years of experience; ages 25-30). The researcher asked them questions about the conspiracy of silence (the ethics of testifying against other doctors in malpractice cases) and how this is affecting the medical field. The interview questioning consisted of five open ended questions including demographics, how many years of experience, familiarity of the conspiracy of silence, medical school education of

malpractice law, knowledge of testimony against other doctors in a court of law, and feelings on testifying. Existing research shows that physicians hesitate when asked to testify against each other in a court of law. The researcher hypothesizes younger physicians will have a different view on the ethics of testifying than older physicians in that they believe younger physicians do not respect their elders as much as the previous generation. In essence, the conspiracy of silence is changing among generations. All of the interviews took place on Zoom. The data collected was an open ended semi structured interview. Each interview was approximately 10 minutes long and there were no follow up interviews.

Results

After conducting the five interviews, responses were analyzed and themed. It is also noted that four out of the five parties attended the same medical school. In regards to the conspiracy of silence, only one out of five had ever heard of this term. After the researcher defined the term, they were still unaware this concept existed. When the participants were asked if they were educated on how to testify against other physicians or educated on the topic in general, their answers were similar. For example, Doctor two said, " I do not recall having discussions on that topic.", Doctor three said, "We were only given a two week crash course in malpractice in our second year of medical school and they did not discuss testifying against other physicians.", Doctor three gave more detail and remembered malpractice was at least discussed, but it was a brief crash course and testifying was not discussed. Doctor four went on to add that his experience in school on the topic was " a brief lecture." The last participant, Doctor five, attended the same medical school said, "the topic was not explained in great detail." It is evident

that the four participants were not educated on the topic by their schooling as not one of them recalled something significantly different than the other.

In addition, the participant that attended a different medical school responded similarly. Doctor one said there was some information in the curriculum, but it "was very limited in scope." Furthermore, the participants were also asked how they would feel if asked to testify against another physician. There were some commonalities in that all of the participants included all or some of the words such as: "uncomfortable," "stressed," "nervous," and "uneasy," in their responses. Even though it caused the participants discomfort, all of the participants showed signs of possibly being willing to testify against a physician. Doctors two and three used the words "more inclined" when there is clear evidence of negligence to testify against another physician, but they did not say they definitely would. In fact, Doctor two said he would be more inclined when there is clear evidence of negligence, but this participant said they would not testify because "the volume of patients that we take care of, mistakes are bound to happen, just like in any other field of work." Furthermore, Doctor three said he is more likely to "happily defend" a physician in a case if he felt the patient was properly treated rather than testifying against them. Doctor four said he would feel "ok" when testifying against another physician only if there was, "clear evidence of negligence." On the other hand, Doctor four said, "I would be less inclined to testify against a friend or mentor." Doctor five also did not want to testify against another physician, but for different reasons. Doctor five felt, "it would be up to experts" to determine if it is negligence. Doctor five mentioned at their point in their career they should not speak up as they do not have much experience. The only person out of the participants with a confident answer that they would testify against another doctor was Doctor one. Doctor one felt that as a

physician it was their ethical responsibility to testify when they see negligence. Doctor one also said, " I would not hesitate to testify against another physician" if what has been done was below the level of standard care. In conclusion only one out of five participants would definitely testify against another physician.

At the end of each interview, each participant was asked for any feedback or anything else that should be further researched. Doctor three said, "It should be further examined how this (malpractice and testifying) is such a lacking part of the medical education."

Discussion

After analyzing the data, the conspiracy of silence was evident. To begin, this was the target age and an accurate depiction of young physicians and recent medical school graduates from ages 25-29. Four out of five physicians did not feel comfortable testifying and the one that would even said he would feel "uneasy" doing so. This data is relevant because these are the new doctors heading into the healthcare field and their stance is the same as older physicians with more experience. All of the participants agreed when there is clear evidence they would feel more inclined to testify, but they were still hesitant. One participant said he would be less inclined to testify against a friend and especially someone who is a mentor. Doctor one would not hesitate when the well being of a patient is at risk. In order to improve the standard of care, doctors often need to testify in malpractice cases when negligence is evident. Again, all of the doctors agreed when they find the standard of care is not being applied they felt inclined to testify. The main issue seems to be friends, colleagues, and mentors. It is natural to feel pressure when the defending doctor is a friend because of potential harm to the relationship. Only Doctor five did not acknowledge this aspect as he said he did not have the medical experience to testify.

Doctor five believed since his experience was so limited that his testimony should be invalid. A doctor with several more years of experience would be better qualified to testify. Doctor five did acknowledge the fact that when he has more experience in the field, he would feel more obligated to testify. Also, when discussing Doctor three's recommendation regarding, "It should be further examined how this (malpractice and testifying) is such a lacking part of the medical education." It appears unusual that a doctor's ethical duty is to testify against another physician when they see negligence, but their education does not enforce the ideology. This should be a topic included in their curriculum. When asked if they were educated or if they heard of the conspiracy they were confused. After the questions relating to testimony were asked, the participants then indicated it is a serious issue. The participants understand it is their ethical duty to speak up when they see negligence because the patient's well being comes first. However, it seemed as if this was the first time the doctors thought deeply about testifying against their colleagues and mentors.

In terms of sample size, it is unfair to draw hard conclusions from this research since only five people participated. A stronger conclusion could be drawn with a larger sample size. Also, of these five, four went to the same medical school. It was evident that these four had the same education on malpractice law. Other doctors from different universities might have had an extensive education on malpractice law and testifying against other physicians. Furthermore, the study only contained male participants. Answers could vary if there were women included in the study. Finally, the demographic was all caucasian. Different cultural backgrounds could have changed the responses as well.

Conclusion

In conclusion, the conspiracy of silence exists in the medical field. After interviewing five physicians who had recently graduated from medical school, only one out of five was willing to testify against another physician without hesitation. The other doctors had concerns relating to testifying against colleagues and especially mentors, due to the impact on relationships. It is noted that all five doctors were not heavily educated on malpractice law. Due to the small sample size, a strong conclusion cannot be drawn that all young doctors are most likely to not testify against a physician when negligence is evident. A larger pool of doctors with different demographics should be interviewed in a future study to help with the accuracy of a strong assumption. However, it is fair to say that the conspiracy of silence will continue to exist if universities do not educate medical school students on the importance of testifying against their colleagues to help improve the medical field. If change is going to happen the medical board and educators have to be the ones who enforce the ideology of doing whatever it takes improve the standard of care.

References

What is malpractice? American Board of Professional Liability Attorneys. (2020). https://www.abpla.org/what-is-malpractice.

AMA principles of medical ethics. American Medical Association. (2021). https://www.ama-assn.org/about/publications-newsletters/ama-principles-medical-ethics.

Avery, J. K. 1985. Lawyers Tell What Turns Some Patients Litigious. *Medical Malpractice Review 2*: 35-37.

Baylis, F. 1997. Errors in Medicine: Nurturing Truthfulness. *Journal of Clinical Ethics 8*: 336-40.

Brown, B. (2021). "Architects' mistakes should be covered with ivy and doctors' with sod": Medical Malpractice, Morton Shulman, and the "Conspiracy of Silence." *Canadian Historical Review, 102*(2), 255–278. https://doi.org/10.3138/chr-2019-0036

Friedman, M. (2010). Medical board accused of enforcing 'conspiracy of silence'. Arkansas Business, 27(9), 15.

Hickson, G. B. (1992). Factors that prompted families to file medical malpractice claims following perinatal injuries. *JAMA: The Journal of the American Medical Association*, *267*(10), 1359. https://doi.org/10.1001/jama.1992.03480100065032

Kohn, L. T., Corrigan, J. M., & Donaldson, M. S. (2000). *To err is human: Building a safer health system*. National Academy Press.

Liang, B. A. (1999). Error in medicine: Legal impediments to U.S. reform. *Journal of Health Politics, Policy and Law*, *24*(1), 27–58. https://doi.org/10.1215/03616878-24-1-27

Localio, A. R., Lawthers, A. G., Brennan, T. A., Laird, N. M., Hebert, L. E., Peterson, L. M., Newhouse, J. P., Weiler, P. C., & Hiatt, H. H. (1991). Relation between Malpractice Claims and Adverse Events Due to Negligence. *New England Journal of Medicine*, *325*(4), 245–251.

Martin, C. A., & Wilson, J. (1991). Physicians' psychologic reaction to malpractice litigation. *Southern Medical Journal*, *84*(Supplement), 37. https://doi.org/10.1097/00007611-199109001-00128

May, T., & Aulisio, M.P. (2001). Medical Malpractice, Mistake Prevention, and Compensation. *Kennedy Institute of Ethics Journal 11*(2), 135-146. doi:10.1353/ken.2001.0014.

Oh, K. J., Savulionyte, G. E., Uohara, M. Y., Owen-Simon, N. L., Esposito, A. C., Dachert, S. R., Das, A., & Strauss, D. M. (2016). Analysis of Malpractice litigation and ethics in medical Student Education: Results from four national legal databases. *Journal of the American College of Surgeons*, *223*(4). https://doi.org/10.1016/j.jamcollsurg.2016.08.255

Self, D., Jecker, N., Baldwin, D. (2003). The Moral Orientations of Justice and Care among Young Physicians. *Cambridge Quarterly of Healthcare Ethics, 12*(1), 54–60. https://doi.org/10.1017/s0963180103121068

Wu, A. W., Cavanaugh, T. A., McPhee, S. J., Lo, B., & Micco, G. P. (1997). To tell the truth. *Journal of General Internal Medicine*, *12*(12), 770–775. https://doi.org/10.1046/j.1525-1497.1997.07163.x

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