

**The Case of Jacob and the Diseased Leg**

Scenario No. 2

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Ethics 101

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This case begins with Jacob, a high school football player who is anticipating a college football scholarship. However, he broke his leg the summer before his senior year. After surgery and a three day stay in the hospital, he was scheduled for weekly checkups with Dr. M., the orthopedic surgeon, for the next six weeks. On his sixth week, Jacob's parents brought him to get the cast removed. After Dr. M. had finished, he told Jacob to wait while he went to check on another patient, Sarah K. He removed his gloves, washed his hands, and left the room. The doors between the rooms were left open which inadvertently allowed Jacob's parents to see and hear everything Dr. M. was saying. They noticed that Dr. M. did not replace his gloves and heard him say that Sarah's osteomyelitis was almost gone. They watched as he examined her leg, without gloves, and told her to come back in another week. Dr. M. came back to Jacob's room without washing his hands or replacing his gloves. He examined Jacob's leg, gave instructions on keeping it clean, and told Jacob to come back in another week. When Jacob came back, his leg was severely infected with a large abscess, which required surgery to drain it. The pathology report concluded that he had developed osteomyelitis. The recovery time would be months, which meant Jacob would be unable to play football and lost his chance on a college scholarship. Jacob's parents asked Dr. M. for the results of the tissue test and sued him for negligence.

There are multiple ethical dilemmas in this case. Dr. M. has an ethical obligation to do no harm. There is a breach in confidentiality by Dr. M. for leaving Sarah's door open so that anyone passing by could hear what was happening, negligence shown by Dr. M. by not following proper hand hygiene techniques, negligence from Jacob's parents for not saying anything about what they saw and heard, and possible negligence from Jacob for not following after care instructions.

First, there was a breach in confidentiality between Dr. M. and Sarah. Confidentiality is defined as the duty to protect the privacy of the patient. Dr. M. did not close the door to his

patients' rooms so Jacob's parents were able to hear and see what was going on in Sarah's room. Verbal communication and patient information should not be discussed where others are able to overhear the conversation. Dr. M. failed to respect Sarah's privacy and her protected health information. If Dr. M. shut the door, Jacob's parents would not have been able to see and hear what was going on in Sarah's room. Jacob's parents could have also shut their door. They would not have been able to ease drop on Sarah's checkup or see that Dr. M. did not wear gloves. However, it is not the responsibility of the patients to prevent a breach in their own or others' privacy, instead, it is the healthcare professional's duty.

Secondly, Dr. M. was negligent in that he did not follow standard precautions. There was no use of hand hygiene or personal protection equipment. Dr. M. may have taken his gloves off and washed hands, but it was in Jacob's room and Sarah may not have seen it. Dr. M. examined Sarah's leg without gloves and when he finished with her exam, he went back to Jacob's room without gloves and did not wash his hands. Dr. M. potentially infected Jacob's leg by touching it with contaminated hands. Even though his hands may not have been visibly dirty, they most likely had some bacteria on them. If Dr. M. had replaced his gloves going between Sarah and Jacob's rooms, possible infection could have been prevented. Dr. M. should have used hand-sanitizer if he was in such a rush and didn't have time to wash his hands. Sarah and Jacob's legs were both visibly infected and any sensible doctor would have cleaned it up and washed their hands afterwards. Handwashing is the simplest way to prevent spread of infection. Gloves prevent direct contact with blood and other bodily fluids. To prevent any spread of infection, Dr. M. should have removed Jacob's cast and examined his leg in one sitting. He should not have stopped in the middle of Jacob's exam to check on another patient when Jacob was already there.

As patients, Jacob's parents were put in a difficult ethical situation. By coming to Dr. M., they put their trust in him to take care of Jacob and heal him. They expected him to be professional and clean. In the Patient Care Partnership, patients have an expectation for hospitals to keep them in a safe and clean environment. Jacob's parents had the option to speak up and ask Dr. M. to put on gloves or wash his hands, but must have trusted that he used some sort of hand hygiene when they weren't looking. In the lawsuit, they could be held liable for contributory negligence along with Jacob who may have been negligent about his post-operation instructions. In the Patient Care Partnership, Jacob and his family should have gone over what was expected of him after he left the hospital following his surgery. The success of his treatment depended on his efforts to follow all post-operation instructions. He was instructed to come back for weekly check-ups and to keep weight off of his leg. Jacob had a slight infection around the stitches before Dr. M. ever went into Sarah's room. It is possible that Jacob was not careful with his cast or followed instructions on how to keep it clean. He could have showered without protecting it from the water; he could have used something like a pencil to scratch an itch under the cast; or he could have used a lotion on dry spots of his skin. Any of these products could have led to an infection that would not have been seen for six weeks due to the cast being in the way.

As a healthcare provider, Dr. M. has primary duty to do no harm. Secondary to nonmaleficence is to do good, also known as beneficence. Dr. M. should want to do good by examining his patients thoroughly and quickly, but since he went back and forth between patients, he unintentionally caused harm. Every procedure has the potential to harm a patient, but maintaining a high quality of patient care significantly reduces the risk. Dr. M. was negligent by not practicing basic hand hygiene. Negligence is an "unintentional tort involving duty, breach of duty, injury, and causation" (Cook and Young, 2007, p. 38). It occurs when there is a duty to use

reasonable care and an injury results from a lack of the reasonable care. Reasonable care is defined as a “degree of care a reasonable person, similarly situated, would use” (Cook and Young, 2007, p. 38). Dr. M. had a duty to Jacob to provide reasonable care, using proper hand hygiene techniques and using personal protective equipment. A doctor in a similar situation would have seen there was an infection on Jacob’s leg and put on gloves to protect himself and his patient. Since Dr. M. is a health care professional, his negligence is a special type known as medical negligence or medical malpractice. Dr. M. would be liable because he had a duty to follow procedures but since he did not, it resulted in harm and loss to the patient.

Law is divided into two categories: criminal and civil. Criminal law deals with offences against society and is punishable by fine or jail time. “Civil law deals with the rights and duties of individuals with respect to one another” (Ehrlich and Coakes, 2021, p. 78). The most common type of lawsuits in the health care field are torts, which are civil wrongs committed against another person or property. There are two types of torts: intentional misconduct and unintentional misconduct. Examples of intentional misconduct include libel, slander, and invasion of privacy. Dr. M. could be sued by Sarah K. for invasion of privacy. Since he left her door open, Jacob’s parents were able to hear about her medical information. Dr. M. disclosed Sarah’s information without her consent. Should Sarah sue, she would have a valid case against Dr. M., in which he could have to pay monetary damages or potentially lose his license or job. However, Jacob’s case falls under unintentional misconduct, which includes negligence and malpractice.

Jacob’s parents decided to sue Dr. M for negligence. In order for Jacob’s parents to establish a valid claim of malpractice they must meet four criteria: 1) the defendant, Dr. M., had a duty to provide reasonable care to the patient, 2) the patient, Jacob, had sustained some loss or

injury, 3) Dr. M. is responsible for the loss, and 4) the loss is attributable to negligence or improper practice (Ehrlich and Coakes, 2021, p. 81). As stated previously, Dr. M. has a duty as a healthcare provider to provide reasonable care to Jacob. Jacob had sustained an injury because of Dr. M.'s negligence and lost his chance to gain a college football scholarship. Dr. M. failed to follow Standard Precautions, which are in place to reduce the transmission of infectious organisms. Legally, Jacob's parents have the court's satisfaction to claim a malpractice suit against Dr. M. It would be best if during the discovery phase of the lawsuit, facts were sought out regarding Dr. M.'s history of not following precautions. It is more than likely a nurse or attending has seen this behavior either during surgery or going through the halls.

However, there is possible contributory negligence along with lawsuit. Contributory negligence is an act of negligence in which the behavior of the patient contributed to the sustained injury. By not saying anything about Dr. M. not washing his hands after coming back from Sarah's room, they inadvertently contributed to Dr. M.'s neglect. Nevertheless, it is not a patient's fault for not having a sterile conscious. Jacob may have also contributed to his infection. Since there appeared to be an infection prior to Dr. M. going to Sarah's room, Jacob may have been careless with his cast. He was intent on getting a college football scholarship so he may have not followed directions with his leg. If this is proven in court, the penalty for Dr. M. would be less severe than if it were just for negligence. Dr. M. is only being sued for negligence and the penalty would be either Dr. M. or the hospital will have to pay for the monetary damages, he could lose his license, or risk unemployment. In order for Jacob to be entitled to compensation, the court must be convinced that the loss he suffered is a direct result of negligent care from Dr. M.

All healthcare providers, whether its radiography technologists, physicians, or surgeons, have a responsibility to apply basic concepts of professionalism throughout their career. Professionalism is having the awareness of what is expected in a given profession, familiarity with professional code of ethics, and an understanding of ethical schools of thought (Cook and Young, 2007, pp. 8-9). As a surgeon, Dr. M. has a professional obligation to his patients, institution, and healthcare field.

Most professions have some standard for all professionals in the field. Based on the ARRT Code of Ethics, Dr. M. failed to exercise care, discretion, and did not act in the best interest of the patient. If he was acting in the best interest of his patients, he would have used washed his hands and used clean gloves in between patients. The Code of Ethics also states that professionals have an obligation to respect the patient's right to privacy and reveal only what is required by law or to protect his patients. He was careless by leaving the exam room doors open and did not care for Sarah's right to privacy. Dr. M. did not follow Rules of Ethics. He did not do anything illegal, but he had a blatant disregard to prevailing standards which created an unnecessary danger to his patient. He did not follow hand hygiene procedures which caused bacteria to infect Jacob's leg. All in all, Dr. M.'s professional behavior was not up to the standards that are expected from a surgeon.

In this case of Jacob and the diseased leg, Dr. M. had a professional obligation to do no harm to his patients. If Dr. M. had a more informed and professional attitude to his patients, his care would improve greatly. In this case, his patient, Jacob has suffered a loss of time and money. What should have been a two month recovery has turned into several months of recovery and a lost chance of a college scholarship. This could have been avoided if the surgeon followed standard precautions and respected the privacy of his patients. A second opportunity to avoid this

error would have been during Jacob's weekly checkups. Dr. M. could have not gone between patients room and stayed with one, completing the examination, and then gone to the next patient. It is clear here that standard precautions such as hand washing and personal protection are vital in maintaining a clean environment. How Jacob developed a diseased leg may have been the same way Sarah developed hers. Dr. M. most likely has a history of neglect to his hand hygiene and it is affecting his patients' care.

## References

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