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Authors
Moore, Gregory P
Pfaff, James A

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Malpractice Cases in Wound Care and a Legal Concept: Special Defense

Gregory P. Moore, MD, JD*
James A. Pfaff, MD†

* Kaiser Permanente Sacramento/Roseville California, Emergency Department; Madigan Army Medical Center; University of California, Davis School of Medicine
† San Antonio Uniformed Health Services Health Education Consortium; Brooke Army Medical Center

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There is no doubt that in today's practice of emergency medicine it is imperative to be familiar with how the law relates to administrative and clinical practice. It is my pleasure to announce, as section editor, the new Legal Medicine section of the Western Journal of Emergency Medicine. It is anticipated that the articles will cover a variety of areas and cases in the law. Some articles may focus on a particular disease or entity, with representative malpractice cases, and clinical caveats. Other articles may focus on legal concepts that enter the arena of emergency medicine. I have provided brief examples of each of these in this initial manuscript. Other articles could also cover original research related to law such as the standard of care in a given clinical situation or legal concepts such as consent, do-not-resuscitate, and AMA among others. I am hopeful that it will be of great interest to the readers. We welcome submissions and contributions for consideration.
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Medical Topic – Wound Foreign Bodies

Over 12 million visits a year throughout the United States for traumatic wounds make them one of the most common reasons for an emergency department (ED) visit.[1] One emergency medicine (EM) text cites wound care as accounting for 5-20% of all ED malpractice claims and 3-11% of all dollars paid out.[2]

Ashly v Gustafson[3] – A woman broke a glass and put the pieces in a bag of trash. She did not notice that a piece was protruding and cut her ankle when it came into contact with the glass. In the ED her wound was sutured, but no-ray was taken. Nine months later she presented for persistent pain and a 2.5 cm piece of glass was removed. Again, no radiographs were done. Seven months after this visit she returned to the ED, and an x-ray revealed three more pieces of glass. She litigated with the claim that an x-ray should have been done on the first visit. At trial she was awarded $119,930. One ED physician was given 42% fault, another 25%.

Nelson v Richter[4] – A teenager cut his foot when a glass fell onto it from a counter. Although the wound was cleaned and examined, it was too small for exploration. Ten days later he returned with persistent pain. In surgery a piece of glass was removed from between two toes. The patient sued, claiming an x-ray should have been done. The defense claimed that the return visit was simply for suture removal and that surgery would have been required irregardless of time of diagnosis. A jury reached a verdict for the defense.

A retained foreign body should be assumed to be present in traumatic wounds until proven otherwise. One study showed that glass, a notorious foreign body, was present in 7% of the lacerations it caused,[5] and research indicates that plain x-ray is greater than 98% sensitive when the foreign body is radiopaque material, such as glass.[6] In a cadaver study, nonleaded glass was visualized with 90% sensitivity and a false-positive rate of 10%.[7] A volume of less than 15 mm^3 (an object less than 1/10 of an inch on either side) was associated with a higher miss rate.[7] Because failure to radiograph glass wounds is a common source of litigation, there should be a low threshold by the clinician to do so. A thorough examination of a laceration caused by glass should be carried out with maximum exposure and good lighting in a bloodless field and through a full range of motion of the affected area. Despite a negative exam, and/or a negative x-ray, upon discharge the patient should be warned of the possibility of a retained foreign body. He should also be instructed about specific signs and symptoms for which he

should return to the ED. The exam and warnings should be appropriately documented on both the chart and discharge instructions.

A 'Special Defense' to Be Aware of: Legal Concepts

We should all be aware of the four components of malpractice. (1) the physician had a duty, (2) breached the duty, (3) resulting in harm to the patient, and (4) the harm was caused by the breach of duty. Typically, if a lawyer proves all four elements are present, the physician is liable for damages. Sometimes "special defenses" may be raised to absolve the physician, even though it appears the elements are all present. For example, if a physician stopped by the roadway to help an injured victim and malpractice occurred, the physician would likely not be held liable by reason of the "Good Samaritan" special defense. Let's look at another special defense recently used in court. It has sound legal basis and was very imaginative.

Ross v Vanderbilt[8] – Kimberly Ross went to the ED with a lacerated finger. The emergency physician (EP), who was in training, determined that sutures were needed and injected lidocaine into the wound. Immediately after the injection, Ross said she didn't feel well. Her arm jerked and her eyes rolled back. The EP walked a few feet from the bedside to summon help. Ross continued jerking and fell to the floor, hitting her head.

After her fall Ross suffered loss of memory and dexterity and had personality changes. Diagnosed with a vasovagal reaction and traumatic brain injury, she brought suit for malpractice. Ross claimed that the physician should have not left her side, allowing her to fall.

On its face, this case seems to fit the criteria for malpractice. There was a duty (the doctor had taken the patient), very possible breach of duty (abandonment by the physician), injury (head trauma), and direct causation (by leaving the bedside the physician was not able to prevent the fall). The EP, however, raised a creative "special defense." In citing the "sudden emergency" (in the ED) defense, he was exonerated.

A valid defensive doctrine accepted in law, the "sudden emergency" defense acknowledges that a person confronted with a sudden or unexpected situation demanding immediate action may not use the same degree of judgment as he would in normal circumstances. Another example would be a car accident where someone is suddenly struck. In attempting to hit the brake pedal, the driver may hit the gas pedal instead and accelerate, striking another car. That driver could claim that the sudden emergency, caused him to do something he would not normally have done, and he would likely be absolved.[9]

In this initial contribution to the new medical-legal section of *West*JEM, we have presented the form of typical future articles that will often focus on a high risk area of EM (such as foreign bodies in wounds) and/or a legal topic (such as the sudden emergency doctrine). The reader will thus gain insight into particular areas of high risk and how to avoid liability and also stay abreast of legal concepts that will impact his or her practice.

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Address for Correspondence: Gregory P. Moore, MD, JD.
5642 Kalispell Way, Sacramento, CA 95835. Email: gmoore4408@aol.com.

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