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(Un)responsible Health System – System or Chaos?

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Many years ago, when medical issues were just one of the topics I covered as a journalist, I followed media coverage of a horrifying case. Since I am writing from memory, and there are no articles about this case available on the internet, I will not be naming persons or institutions involved. At the time, the media covered for days the death of a 5-year old girl who died after having been examined twice in the emergency department of one of the largest state hospitals in Croatia. Both times, doctors concluded that the girl had a viral infection and sent her and her parents home, ordering bed rest. Just a few hours after the second visit to the emergency office, the girl died. In a state of complete shock, the parents managed to find the strength to publicly question the doctors' responsibility for their daughter's death after the doctors had assured the parents that the girl would recover in a few days.

In the beginning of 1990s, cases like this were rarely portrayed in the media so this one got the attention of a wide audience. A few days after the girl's death, the hospital director held a press conference, constantly repeating a dire statement of "how anyone can think that the hospital could be responsible for such a tragedy," and to demonstrate it, he came prepared with "hard" evidence, including the autopsy findings. He explained that the girl had, unfortunately, died from a very rare genetic malformation, *hernia inguinalis*, leaving no doubt that a child with such a malformation could be saved. I remember this part very clearly, for I was stunned by the director's rudeness, which inspired me to write one of the first commentaries on the behavior of medical service providers in cases of evident malpractice. What also surprised me was that it didn't even occur to other journalists to check the meaning of the diagnosis that was so nicely served in Latin. The common name of the disease is groin prolapse, a condition that is easily and routinely treated by a small surgical procedure. However, the day after the conference the newspapers carried headlines "The girl died from a very rare malformation," ending all discussion about this case.

My own commentary offended and enraged the hospital's administration and doctors but, being singular and unique, it was soon forgotten. That is how it was then – doctors had no problems with journalists, and even fewer with patients who would dare publicly or legally question their practices.

Many years later, in the beginning of 2002, Croatian media ran a story of a medical malpractice that had led to the death of Dragica Ivankić during childbirth at the Department for Gynecology and Obstetrics of the Holy Spirit General Hospital in Zagreb (1). The hospital director at the time was Prof. Asim Kurjak, one of the most famous and most powerful Croatian doctors. Media investigations and coverage had by that time greatly improved: cases that involved important and distinguished medical elites were under review and scrutiny of many, including the so-called unofficial sources within the hospital, but also experts from the Croatian Medical Chamber, Ministry of Health and Social Welfare, court experts, and many others. It also seemed then that the media was always a step ahead of the official channels, ahead of the hospital spokespersons, and in this case, ahead of Prof. Kurjak. His statement that a premature shedding of the placenta and the uterine lining, determined by the hospital's pathologist, was the cause of death failed to convince the media or the relatives. Soon it was discovered that the real cause of death was the rupture of the uterus, not recognized by two gynecologists in charge, after which the patient was urgently taken to the operating room but could not be saved (2). The files also showed a number of procedural mistakes and periods of time when the patient had not been supervised or given proper care. Newspaper articles were filled with technical terms and interpretations of the event, quoting many sources and explaining in detail what had happened. And so there was no going back. After months of uproar, state prosecutors finally brought charges against the gynecologists in charge of the labor and against Prof. Kurjak, who was charged of falsifying official medical documentation

and of assisting in felony. Something like this would have never happened in the 1990s.

The fact that the private attorney of Dragica Ivankić's husband managed to get a prison sentence for Prof. Kurjak, even after the case had fallen to the statute of limitations, a feat not achieved by the State Attorney's Office (DORH) prosecuting Prof. Kurjak for the same crime, is not only a slap in the face for DORH but also proves that the public has been sensitized to the problem of medical malpractices and is now able to scrutinize medical work and raise lawsuits against it. Public perception and reporting of medical malpractice is now very common. Still, legal channels are even now too slow in resolving such cases. A widely known case of a young man, Miroslav Maškarin, whose leg had to be amputated following a medical malpractice and whose health was severely impaired after a laparoscopic surgery for appendicitis, is not only monstrous but also paradigmatic – for 4 full years the state has failed to find a way to compensate the young man and that what had happened is still interpreted as a possible complication of the surgery (3).

There are alarming things happening at the moment that do not attract the attention of the media and not even of medical or state officials: some attorneys are managing to win almost the maximum amounts of compensatory damages for their clients (according to the criteria given by the Supreme Court, this sum can reach HRK 2 million or almost € 300 000). For example (4), after 21 years of court proceedings, the University of Split Hospital Center was ordered to pay HRK 1 million damages to the family of a woman whose death had been caused by medical malpractice. The family of a man from Varaždin received a verdict for HRK 1.13 million after a physician had failed to recognize the symptoms of meningococcal sepsis and released the patient. In 2008, the County Court in Sisak ordered the hospital in Pakrac to pay damages of HRK 1.4 million to the family of a woman who had died because of medical malpractice. All these verdicts were made possible by the perseverance of the victims' families and their lawyers, without any help from the Ministry of Health and Social Welfare or from the institutions in which these incidents occurred.

This leads me to the most important case of this commentary. Except in the case of Dragica Ivankić's death in 2002, in which the media played the decisive role, never have I seen the supervising committee of the Ministry of Health and Social Welfare determine or admit medical malpractice, or give a statement that would resolve the cases for the families. I

have never heard of an apology being expressed or damages being offered to anyone. The Ministry holds no record of the malpractices that have occurred in Croatia.

In May of 2010, a precedent occurred that should have ignited actions in any ministry of health that takes itself seriously. I wrote an article about the case of the Pitra family (5), later covered even by the national television channel, HRT. The Pitra family was expecting their first child in 2007. The mother had a normal pregnancy and went for regular visits to a private gynecologist. The gynecologist informed the parents about a common practice that gynecologists with a private practice could deliver babies of their patients in a state hospital. This, of course, carried a cost of HRK 4400 to 9500 (€ 600 to 1300). I do not understand how state hospitals allowed such practices because private doctors had no legal base to charge for deliveries that took place in state hospitals. What is even worse, the gynecologist did not even own a license that would permit him to work in the state hospital where the delivery was to take place. Completely unaware of this legal background, the family agreed that their gynecologist should be the one to deliver their baby. Unfortunately, the labor ended tragically – the baby was delivered by a state gynecologist under supervision of the private gynecologist, and was born half-dead; the signs of fetal suffering had been ignored and the labor had not been induced on time by necessary medical procedures. Their boy is now mentally and physically disabled and has been operated on countless times since his birth, which caused unimaginable suffering to the boy and his parents. Frustrated by the fact that no one from the hospital ever contacted them, apologized, or provided medical documentation that should have been released to them, the family raised a lawsuit against the doctors. The first hearing was held after the media had published the story. To my big surprise, the Ministry of Health and Social Welfare released a statement in which they admitted that malpractice had occurred (6) and their representatives joined me on TV to discuss this case. This will undoubtedly help the proceedings of the case. My comment on the TV program was that the state health care insurance should pay damages immediately when a mistake is admitted, and that the Ministry should establish a fund for cases like this. However, the Ministry representative hopelessly shrugged his shoulders and replied that they have to wait for the final court verdict before paying any damages, as if he did not understand that the legal system and the health system were two different entities. The attorney for the family told me that he would offer the Ministry a proposal for a settlement, which the Ministry

should accept after having admitted the mistake. When I explained to him that his plan was not realistic because of the many loopholes in the system, he just stared at me in disbelief. The Croatian health system is rather primitive and lacks the concept of responsibility, leaving cases like these to the legal system. If there is a verdict of malpractice, the damages assigned are paid from the state fund for health institutions. Since this fund is filled by the taxpayers' contribution for their national health insurance, this means that the family in question will get their own money, my money, and everybody else's money for the tragic mistake caused by medical negligence. What's worse and even irresponsible, is the fact that so far not even a single Minister of Health in Croatia has considered or opened a discussion about the aspects of responsibility of the system for these mistakes, including material issues involved. In the last 20 years, the health system has evolved in a way that it now "allows" the criticism of the public and the freedom of the media but it accepts responsibility only if ordered by the court, and there its evolution stops. This says more about the system and the ministers than any singular mistake, be it political, organizational, or financial. This is the virus deeply buried in the core of the system. The fact that in the case of the Pitra family the Ministry admits its mistake but shows no "remorse," and that it does not provide immediate compensation for such cases speaks on its own of the urgency with which this issue should be addressed.

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