

**LEAH ALESNA REYES, ROSE NAHDJA, JOHNNY, AND MINORS LLOYD AND KRISTINE, ALL SURNAMED REYES, REPRESENTED BY THEIR MOTHER, LEAH ALESNA REYES, PETITIONERS, VS. SISTERS OF MERCY HOSP...***G.R. No. 130547. October 03, 2000*

Ponente: MENDOZA, J.

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This is a petition for review of the decision[1] of the Court of Appeals in CA-G.R. CV No. 36551 affirming the decision of the Regional Trial Court, Branch IX, Cebu City which dismissed a complaint for damages filed by petitioners against respondents.

The facts are as follows:

Petitioner Leah Alesna Reyes is the wife of the late Jorge Reyes. The other petitioners, namely, Rose Nahdja, Johnny, Lloyd, and Kristine, all surnamed Reyes, were their children. Five days before his death on January 8, 1987, Jorge had been suffering from a recurring fever with chills. After he failed to get relief from some home medication he was taking, which consisted of analgesic, antipyretic, and antibiotics, he decided to see the doctor.

On January 8, 1987, he was taken to the Mercy Community Clinic by his wife. He was attended to by respondent Dr. Marlyn Rico, resident physician and admitting physician on duty, who gave Jorge a physical examination and took his medical history. She noted that at the time of his admission, Jorge was conscious, ambulatory, oriented, coherent, and with respiratory distress.[2] Typhoid fever was then prevalent in the locality, as the clinic had been getting from 15 to 20 cases of typhoid per month.[3] Suspecting that Jorge could be suffering from this disease, Dr. Rico ordered a Widal Test, a standard test for typhoid fever, to be performed on Jorge. Blood count, routine urinalysis, stool examination, and malarial smear were also made.[4] After about an hour, the medical technician submitted the results of the test from which Dr. Rico concluded that Jorge was positive for typhoid fever. As her shift was only up to 5:00 p.m., Dr. Rico indorsed Jorge to respondent Dr. Marvie Blanes.

Dr. Marvie Blanes attended to Jorge at around six in the evening. She also took Jorge's history and gave him a physical examination. Like Dr. Rico, her impression was that Jorge had typhoid fever. Antibiotics being the accepted treatment for typhoid fever, she ordered that a compatibility test with the antibiotic chloromycetin be done on Jorge. Said test was administered by nurse Josephine Pagente who also gave the patient a dose of triglobe. As she did not observe any adverse reaction by the patient to chloromycetin, Dr. Blanes ordered the first five hundred milligrams of said antibiotic to be administered on Jorge at around 9:00 p.m. A second dose was administered on Jorge about three hours later just before midnight.

At around 1:00 a.m. of January 9, 1987, Dr. Blanes was called as Jorge's temperature rose to 41°C. The patient also experienced chills and exhibited respiratory distress, nausea, vomiting, and convulsions. Dr. Blanes put him under oxygen, used a suction machine, and administered hydrocortisone, temporarily easing the patient's

convulsions. When he regained consciousness, the patient was asked by Dr. Blanes whether he had a previous heart ailment or had suffered from chest pains in the past. Jorge replied he did not.[5] After about 15 minutes, however, Jorge again started to vomit, showed restlessness, and his convulsions returned. Dr. Blanes re-applied the emergency measures taken before and, in addition, valium was administered. Jorge, however, did not respond to the treatment and slipped into cyanosis, a bluish or purplish discoloration of the skin or mucous membrane due to deficient oxygenation of the blood. At around 2:00 a.m., Jorge died. He was forty years old. The cause of his death was "Ventricular Arrhythmia Secondary to Hyperpyrexia and typhoid fever."

On June 3, 1987, petitioners filed before the Regional Trial Court of Cebu City a complaint[6] for damages against respondents Sisters of Mercy, Sister Rose Palacio, Dr. Marvie Blanes, Dr. Marlyn Rico, and nurse Josephine Pagente. On September 24, 1987, petitioners amended their complaint to implead respondent Mercy Community Clinic as additional defendant and to drop the name of Josephine Pagente as defendant since she was no longer connected with respondent hospital. Their principal contention was that Jorge did not die of typhoid fever.[7] Instead, his death was due to the wrongful administration of chloromycetin. They contended that had respondent doctors exercised due care and diligence, they would not have recommended and rushed the performance of the Widal Test, hastily concluded that Jorge was suffering from typhoid fever, and administered chloromycetin without first conducting sufficient tests on the patient's compatibility with said drug. They charged respondent clinic and its directress, Sister Rose Palacio, with negligence in failing to provide adequate facilities and in hiring negligent doctors and nurses.[8]

Respondents denied the charges. During the pre-trial conference, the parties agreed to limit the issues on the following: (1) whether the death of Jorge Reyes was due to or caused by the negligence, carelessness, imprudence, and lack of skill or foresight on the part of defendants; (2) whether respondent Mercy Community Clinic was negligent in the hiring of its employees; and (3) whether either party was entitled to damages. The case was then heard by the trial court during which, in addition to the testimonies of the parties, the testimonies of doctors as expert witnesses were presented.

Petitioners offered the testimony of Dr. Apolinar Vacalares, Chief Pathologist at the Northern Mindanao Training Hospital, Cagayan de Oro City. On January 9, 1987, Dr. Vacalares performed an autopsy on Jorge Reyes to determine the cause of his death. However, he did not open the skull to examine the brain. His findings[9] showed that the gastro-intestinal tract was normal and without any ulceration or enlargement of the nodules. Dr. Vacalares testified that Jorge did not die of typhoid fever. He also stated that he had not seen a patient die of typhoid fever within five days from the onset of the disease.

For their part, respondents offered the testimonies of Dr. Peter Gotiong and Dr. Ibarra Panopio. Dr. Gotiong is a diplomate in internal medicine whose expertise is microbiology and infectious diseases. He is also a consultant at the Cebu City Medical Center and an associate professor of medicine at the South Western University College of Medicine in Cebu City. He had treated over a thousand cases of typhoid patients. According to Dr. Gotiong, the patient's history and positive Widal Test results ratio of 1:320 would make him suspect that the patient had typhoid fever. As to Dr. Vacalares' observation regarding the absence of ulceration in Jorge's gastro-intestinal tract, Dr. Gotiong said that such hyperplasia in the intestines of a typhoid victim may be microscopic. He noted that since the toxic effect of typhoid fever may lead to meningitis, Dr. Vacalares' autopsy should have included an examination of the brain.[10]

The other doctor presented was Dr. Ibarra Panopio, a member of the American Board of Pathology, examiner of the Philippine Board of Pathology from 1978 to 1991, fellow of the Philippine Society of Pathologist, associate professor of the Cebu Institute of Medicine, and chief pathologist of the Andres Soriano Jr. Memorial Hospital in Toledo City. Dr. Panopio stated that although he was partial to the use of the culture test for its greater reliability

in the diagnosis of typhoid fever, the Widal Test may also be used. Like Dr. Gotiong, he agreed that the 1:320 ratio in Jorge's case was already the maximum by which a conclusion of typhoid fever may be made. No additional information may be deduced from a higher dilution.[11] He said that Dr. Vacalares' autopsy on Jorge was incomplete and thus inconclusive.

On September 12, 1991, the trial court rendered its decision absolving respondents from the charges of negligence and dismissing petitioners' action for damages. The trial court likewise dismissed respondents' counterclaim, holding that, in seeking damages from respondents, petitioners were impelled by the honest belief that Jorge's death was due to the latter's negligence.

Petitioners brought the matter to the Court of Appeals. On July 31, 1997, the Court of Appeals affirmed the decision of the trial court.

Hence this petition.

Petitioners raise the following assignment of errors:

- THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT THE DOCTRINE OF RES IPSA LOQUITUR IS NOT APPLICABLE IN THE INSTANT CASE.
- THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT MADE AN UNFOUNDED ASSUMPTION THAT THE LEVEL OF MEDICAL PRACTICE IS LOWER IN ILIGAN CITY.
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED FOR A LESSER STANDARD OF CARE AND DEGREE OF DILIGENCE FOR MEDICAL PRACTICE IN ILIGAN CITY WHEN IT APPRECIATE[D] NO DOCTOR'S NEGLIGENCE IN THE TREATMENT OF JORGE REYES.

Petitioner's action is for medical malpractice. This is a particular form of negligence which consists in the failure of a physician or surgeon to apply to his practice of medicine that degree of care and skill which is ordinarily employed by the profession generally, under similar conditions, and in like surrounding circumstances.[12] In order to successfully pursue such a claim, a patient must prove that the physician or surgeon either failed to do something which a reasonably prudent physician or surgeon would have done, or that he or she did something that a reasonably prudent physician or surgeon would not have done, and that the failure or action caused injury to the patient.[13] There are thus four elements involved in medical negligence cases, namely: duty, breach, injury, and proximate causation.

In the present case, there is no doubt that a physician-patient relationship existed between respondent doctors and Jorge Reyes. Respondents were thus duty-bound to use at least the same level of care that any reasonably competent doctor would use to treat a condition under the same circumstances. It is breach of this duty which constitutes actionable malpractice.[14] As to this aspect of medical malpractice, the determination of the reasonable level of care and the breach thereof, expert testimony is essential. Inasmuch as the causes of the injuries involved in malpractice actions are determinable only in the light of scientific knowledge, it has been recognized that expert testimony is usually necessary to support the conclusion as to causation.[15]

#### Res Ipsa Loquitur

There is a case when expert testimony may be dispensed with, and that is under the doctrine of res ipsa loquitur. As held in *Ramos v. Court of Appeals*: [16]

Although generally, expert medical testimony is relied upon in malpractice suits to prove that a physician has done a negligent act or that he has deviated from the standard medical procedure, when the doctrine of res ipsa

loquitor is availed by the plaintiff, the need for expert medical testimony is dispensed with because the injury itself provides the proof of negligence. The reason is that the general rule on the necessity of expert testimony applies only to such matters clearly within the domain of medical science, and not to matters that are within the common knowledge of mankind which may be testified to by anyone familiar with the facts. Ordinarily, only physicians and surgeons of skill and experience are competent to testify as to whether a patient has been treated or operated upon with a reasonable degree of skill and care. However, testimony as to the statements and acts of physicians and surgeons, external appearances, and manifest conditions which are observable by any one may be given by non-expert witnesses. Hence, in cases where the *res ipsa loquitor* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitor* without medical evidence, which is ordinarily required to show not only what occurred but how and why it occurred. When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to *res ipsa loquitor* is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.

Thus, courts of other jurisdictions have applied the doctrine in the following situations: leaving of a foreign object in the body of the patient after an operation, injuries sustained on a healthy part of the body which was not under, or in the area, of treatment, removal of the wrong part of the body when another part was intended, knocking out a tooth while a patient's jaw was under anesthetic for the removal of his tonsils, and loss of an eye while the patient was under the influence of anesthetic, during or following an operation for appendicitis, among others.[17]

Petitioners asserted in the Court of Appeals that the doctrine of *res ipsa loquitor* applies to the present case because Jorge Reyes was merely experiencing fever and chills for five days and was fully conscious, coherent, and ambulant when he went to the hospital. Yet, he died after only ten hours from the time of his admission.

This contention was rejected by the appellate court.

Petitioners now contend that all requisites for the application of *res ipsa loquitor* were present, namely: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person in charge; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured.[18]

The contention is without merit. We agree with the ruling of the Court of Appeals. In the Ramos case, the question was whether a surgeon, an anesthesiologist, and a hospital should be made liable for the comatose condition of a patient scheduled for cholecystectomy.[19] In that case, the patient was given anesthesia prior to her operation. Noting that the patient was neurologically sound at the time of her operation, the Court applied the doctrine of *res ipsa loquitor* as mental brain damage does not normally occur in a gallbladder operation in the absence of negligence of the anesthesiologist. Taking judicial notice that anesthesia procedures had become so common that even an ordinary person could tell if it was administered properly, we allowed the testimony of a witness who was not an expert. In this case, while it is true that the patient died just a few hours after professional medical assistance was rendered, there is really nothing unusual or extraordinary about his death. Prior to his admission, the patient already had recurring fevers and chills for five days unrelieved by the analgesic, antipyretic, and antibiotics given him by his wife. This shows that he had been suffering from a serious illness and professional medical help came too late for him.

Respondents alleged failure to observe due care was not immediately apparent to a layman so as to justify application of *res ipsa loquitur*. The question required expert opinion on the alleged breach by respondents of the standard of care required by the circumstances. Furthermore, on the issue of the correctness of her diagnosis, no presumption of negligence can be applied to Dr. Marlyn Rico. As held in Ramos:

. . . . *Res ipsa loquitur* is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case. It is generally restricted to situations in malpractice cases where a layman is able to say, as a matter of common knowledge and observation, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised. A distinction must be made between the failure to secure results, and the occurrence of something more unusual and not ordinarily found if the service or treatment rendered followed the usual procedure of those skilled in that particular practice. It must be conceded that the doctrine of *res ipsa loquitur* can have no application in a suit against a physician or a surgeon which involves the merits of a diagnosis or of a scientific treatment. The physician or surgeon is not required at his peril to explain why any particular diagnosis was not correct, or why any particular scientific treatment did not produce the desired result.[20]

### Specific Acts of Negligence

We turn to the question whether petitioners have established specific acts of negligence allegedly committed by respondent doctors.

Petitioners contend that: (1) Dr. Marlyn Rico hastily and erroneously relied upon the Widal test, diagnosed Jorge's illness as typhoid fever, and immediately prescribed the administration of the antibiotic chloromycetin;[21] and (2) Dr. Marvie Blanes erred in ordering the administration of the second dose of 500 milligrams of chloromycetin barely three hours after the first was given.[22] Petitioners presented the testimony of Dr. Apolinar Vacalares, Chief Pathologist of the Northern Mindanao Training Hospital, Cagayan de Oro City, who performed an autopsy on the body of Jorge Reyes. Dr. Vacalares testified that, based on his findings during the autopsy, Jorge Reyes did not die of typhoid fever but of shock undetermined, which could be due to allergic reaction or chloromycetin overdose. We are not persuaded.

First. While petitioners presented Dr. Apolinar Vacalares as an expert witness, we do not find him to be so as he is not a specialist on infectious diseases like typhoid fever. Furthermore, although he may have had extensive experience in performing autopsies, he admitted that he had yet to do one on the body of a typhoid victim at the time he conducted the postmortem on Jorge Reyes. It is also plain from his testimony that he has treated only about three cases of typhoid fever. Thus, he testified that:[23]

ATTY. PASCUAL:

Q

Why? Have you not testified earlier that you have never seen a patient who died of typhoid fever?

A

In autopsy. But, that was when I was a resident physician yet.

Q

But you have not performed an autopsy of a patient who died of typhoid fever?

A

I have not seen one.

Q

And you testified that you have never seen a patient who died of typhoid fever within five days?

A

I have not seen one.

Q

How many typhoid fever cases had you seen while you were in the general practice of medicine?

A

In our case we had no widal test that time so we cannot consider that the typhoid fever is like this and like that. And the widal test does not specify the time of the typhoid fever.

Q

The question is: how many typhoid fever cases had you seen in your general practice regardless of the cases now you practice?

A

I had only seen three cases.

Q

And that was way back in 1964?

A

Way back after my training in UP.

Q

Clinically?

A

Way back before my training.

He is thus not qualified to prove that Dr. Marlyn Rico erred in her diagnosis. Both lower courts were therefore correct in discarding his testimony, which is really inadmissible.

In Ramos, the defendants presented the testimony of a pulmonologist to prove that brain injury was due to oxygen deprivation after the patient had bronchospasms[24] triggered by her allergic response to a drug,[25] and not due to faulty intubation by the anesthesiologist. As the issue was whether the intubation was properly performed by an anesthesiologist, we rejected the opinion of the pulmonologist on the ground that he was not: (1) an anesthesiologist who could enlighten the court about anesthesia practice, procedure, and their complications; nor (2) an allergologist who could properly advance expert opinion on allergic mediated processes; nor (3) a pharmacologist who could explain the pharmacologic and toxic effects of the drug allegedly responsible for the bronchospasms.

Second. On the other hand, the two doctors presented by respondents clearly were experts on the subject. They vouched for the correctness of Dr. Marlyn Rico's diagnosis. Dr. Peter Gotiong, a diplomate whose specialization is infectious diseases and microbiology and an associate professor at the Southwestern University College of

Medicine and the Gullas College of Medicine, testified that he has already treated over a thousand cases of typhoid fever.[26] According to him, when a case of typhoid fever is suspected, the Widal test is normally used,[27] and if the 1:320 results of the Widal test on Jorge Reyes had been presented to him along with the patient's history, his impression would also be that the patient was suffering from typhoid fever.[28] As to the treatment of the disease, he stated that chloromycetin was the drug of choice.[29] He also explained that despite the measures taken by respondent doctors and the intravenous administration of two doses of chloromycetin, complications of the disease could not be discounted. His testimony is as follows:[30]

ATTY. PASCUAL:

Q

If with that count with the test of positive for 1 is to 320, what treatment if any would be given?

A

If those are the findings that would be presented to me, the first thing I would consider would be typhoid fever.

Q

And presently what are the treatments commonly used?

A

Drug of choice of chloramphenical.

Q

Doctor, if given the same patient and after you have administered chloramphenical about 3 1/2 hours later, the patient associated with chills, temperature - 41[o]C, what could possibly come to your mind?

A

Well, when it is change in the clinical finding, you have to think of complication.

Q

And what will you consider on the complication of typhoid?

A

One must first understand that typhoid fever is toximia. The problem is complications are caused by toxins produced by the bacteria . . . whether you have suffered complications to think of -- heart toxic myocardities; then you can consider a toxic meningitis and other complications and perforations and bleeding in the ilium.

Q

Even that 40-year old married patient who received medication of chloromycetin of 500 milligrams intravenous, after the skin test, and received a second dose of chloromycetin of 500 miligrams, 3 hours later, the patient developed chills . . . rise in temperature to 41[o]C, and then about 40 minutes later the temperature rose to 100[o]F, cardiac rate of 150 per minute who appeared to be coherent, restless, nauseating, with seizures: what significance could you attach to these clinical changes?

A

I would then think of toxemia, which was toxic meningitis and probably a toxic meningitis because of the high cardiac rate.

Q

Even if the same patient who, after having given intramuscular valium, became conscious and coherent about 20 minutes later, have seizure and cyanosis and rolling of eyeballs and vomiting . . . and death: what significance would you attach to this development?

A

We are probably dealing with typhoid to meningitis.

Q

In such case, Doctor, what finding if any could you expect on the post-mortem examination?

A

No, the finding would be more on the meninges or covering of the brain.

Q

And in order to see those changes would it require opening the skull?

A

Yes.

As regards Dr. Vacalares' finding during the autopsy that the deceased's gastro-intestinal tract was normal, Dr. Rico explained that, while hyperplasia[31] in the Peyer's patches or layers of the small intestines is present in typhoid fever, the same may not always be grossly visible and a microscope was needed to see the texture of the cells.[32]

Respondents also presented the testimony of Dr. Ibarra T. Panopio who is a member of the Philippine and American Board of Pathology, an examiner of the Philippine Board of Pathology, and chief pathologist at the MetroCebu Community Hospital, Perpetual Succor Hospital, and the Andres Soriano Jr. Memorial Medical Center. He stated that, as a clinical pathologist, he recognized that the Widal test is used for typhoid patients, although he did not encourage its use because a single test would only give a presumption necessitating that the test be repeated, becoming more conclusive at the second and third weeks of the disease.[33] He corroborated Dr. Gotiong's testimony that the danger with typhoid fever is really the possible complications which could develop like perforation, hemorrhage, as well as liver and cerebral complications.[34] As regards the 1:320 results of the Widal test on Jorge Reyes, Dr. Panopio stated that no additional information could be obtained from a higher ratio.[35] He also agreed with Dr. Gotiong that hyperplasia in the Peyer's patches may be microscopic.[36]

Indeed, the standard contemplated is not what is actually the average merit among all known practitioners from the best to the worst and from the most to the least experienced, but the reasonable average merit among the ordinarily good physicians.[37] Here, Dr. Marlyn Rico did not depart from the reasonable standard recommended by the experts as she in fact observed the due care required under the circumstances. Though the Widal test is not conclusive, it remains a standard diagnostic test for typhoid fever and, in the present case, greater accuracy through repeated testing was rendered unobtainable by the early death of the patient. The results of the Widal test and the patient's history of fever with chills for five days, taken with the fact that typhoid fever was then prevalent as indicated by the fact that the clinic had been getting about 15 to 20 typhoid cases a month, were sufficient to give upon any doctor of reasonable skill the impression that Jorge Reyes had typhoid fever.

Dr. Rico was also justified in recommending the administration of the drug chloromycetin, the drug of choice for

typhoid fever. The burden of proving that Jorge Reyes was suffering from any other illness rested with the petitioners. As they failed to present expert opinion on this, preponderant evidence to support their contention is clearly absent.

Third. Petitioners contend that respondent Dr. Marvie Blanes, who took over from Dr. Rico, was negligent in ordering the intravenous administration of two doses of 500 milligrams of chloromycetin at an interval of less than three hours. Petitioners claim that Jorge Reyes died of anaphylactic shock<sup>[38]</sup> or possibly from overdose as the second dose should have been administered five to six hours after the first, per instruction of Dr. Marlyn Rico. As held by the Court of Appeals, however:

That chloromycetin was likewise a proper prescription is best established by medical authority. Wilson, et. al., in Harrison's Principle of Internal Medicine, 12th ed. write that chlorampenicol (which is the generic of chloromycetin) is the drug of choice for typhoid fever and that no drug has yet proven better in promoting a favorable clinical response. "Chlorampenicol (Chloromycetin) is specifically indicated for bacterial meningitis, typhoid fever, rickettsial infections, bacteriodes infections, etc." (PIMS Annual, 1994, p. 211) The dosage likewise including the first administration of five hundred milligrams (500 mg.) at around nine o'clock in the evening and the second dose at around 11:30 the same night was still within medically acceptable limits, since the recommended dose of chloromycetin is one (1) gram every six (6) hours. (cf. Pediatric Drug Handbook, 1st Ed., Philippine Pediatric Society, Committee on Therapeutics and Toxicology, 1996). The intravenous route is likewise correct. (Mansser, O'Nick, Pharmacology and Therapeutics) Even if the test was not administered by the physician-on-duty, the evidence introduced that it was Dra. Blanes who interpreted the results remain uncontroverted. (Decision, pp. 16-17) Once more, this Court rejects any claim of professional negligence in this regard.

....

As regards anaphylactic shock, the usual way of guarding against it prior to the administration of a drug, is the skin test of which, however, it has been observed: "Skin testing with haptenic drugs is generally not reliable. Certain drugs cause nonspecific histamine release, producing a weal-and-flare reaction in normal individuals. Immunologic activation of mast cells requires a polyvalent allergen, so a negative skin test to a univalent haptenic drug does not rule out anaphylactic sensitivity to that drug." (Terr, "Anaphylaxis and Urticaria" in Basic and Clinical Immunology, p. 349) What all this means legally is that even if the deceased suffered from an anaphylactic shock, this, of itself, would not yet establish the negligence of the appellee-physicians for all that the law requires of them is that they perform the standard tests and perform standard procedures. The law cannot require them to predict every possible reaction to all drugs administered. The onus probandi was on the appellants to establish, before the trial court, that the appellee-physicians ignored standard medical procedure, prescribed and administered medication with recklessness and exhibited an absence of the competence and skills expected of general practitioners similarly situated.<sup>[39]</sup>

Fourth. Petitioners correctly observe that the medical profession is one which, like the business of a common carrier, is affected with public interest. Moreover, they assert that since the law imposes upon common carriers the duty of observing extraordinary diligence in the vigilance over the goods and for the safety of the passengers,<sup>[40]</sup> physicians and surgeons should have the same duty toward their patients.<sup>[41]</sup> They also contend that the Court of Appeals erred when it allegedly assumed that the level of medical practice is lower in Iligan City, thereby reducing the standard of care and degree of diligence required from physicians and surgeons in Iligan City.

The standard of extraordinary diligence is peculiar to common carriers. The Civil Code provides:

Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported

by them, according to the circumstances of each case. . . .

The practice of medicine is a profession engaged in only by qualified individuals. It is a right earned through years of education, training, and by first obtaining a license from the state through professional board examinations. Such license may, at any time and for cause, be revoked by the government. In addition to state regulation, the conduct of doctors is also strictly governed by the Hippocratic Oath, an ancient code of discipline and ethical rules which doctors have imposed upon themselves in recognition and acceptance of their great responsibility to society. Given these safeguards, there is no need to expressly require of doctors the observance of "extraordinary" diligence. As it is now, the practice of medicine is already conditioned upon the highest degree of diligence. And, as we have already noted, the standard contemplated for doctors is simply the reasonable average merit among ordinarily good physicians. That is reasonable diligence for doctors or, as the Court of Appeals called it, the reasonable "skill and competence . . . that a physician in the same or similar locality . . . should apply."

WHEREFORE, the instant petition is DENIED and the decision of the Court of Appeals is AFFIRMED.

**SO ORDERED.**

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Associate Justice Hilarion L. Aquino, with concurrence of Associate Justice (now Supreme Court Justice) Minerva P. Gonzaga-Reyes and Associate Justice Eubulo G. Verzola.

[2] TSN, p. 18, Aug. 14, 1990.

[3] TSN, p. 18, Oct. 19, 1990.

[4] TSN, p. 19, Aug. 14, 1990.

[5] TSN, pp. 42-43, Oct. 19, 1990.

[6] Records, p. 1.

[7] Amended complaint, p. 6; Records, p. 61.

[8] Id. at 7.

[9] Exh. A.

[10] TSN, pp. 4-14, Dec. 17, 1990.

[11] TSN, p. 18, March 8, 1991.

[12] 61 Am. Jur. 2d 337, §205 on Physicians, Surgeons, etc.

[13] Garcia-Rueda v. Pascasio, 278 SCRA 769, 778 (1997).

[14] Id. at 778-779.

[15] Id. at 200, citing 61 Am. Jur. 2d, 510.

[16] G.R. No. 124354, Dec. 29, 1999.

[17] Id. (Citations omitted; emphasis added)

[18] Petition, p. 9; Rollo, p. 12.

[19] The surgical excision of the gallbladder.

[20] Ramos v. Court of Appeals, *supra*.

[21] Petition, p. 10; Rollo, p. 13.

[22] *Id.* at p. 17.

[23] TSN, pp. 33-35, Sept. 20, 1989.

[24] The constriction of air passages in the lungs by spasmodic contraction of the bronchial muscles.

[25] Thiopental Sodium.

[26] TSN, p.6, Dec. 17, 1990.

[27] *Id.*

[28] *Id.* at 9.

[29] *Id.*

[30] *Id.* at 9-12.

[31] An abnormal or unusual increase in the component cells.

[32] TSN, p. 12, Dec. 17, 1990.

[33] TSN, p 37-40, March 8, 1991.

[34] *Id.* at 27-30.

[35] *Id.* at 18.

[36] *Id.* at 30.

[37] 61 Am. Jur. 2d 338.

[38] A state of shock resulting from injection or more rarely ingestion of sensitizing antigen or hapten and due mainly to contraction of smooth muscle and increased capillary permeability caused by release in the tissues and circulation of histamine, heparin, and perhaps acetylcholin and serotonin.

[39] CA Decision, pp. 5-7; Rollo, pp. 31-33. (*Italics supplied*)

**[40] THE CIVIL CODE, ART. 1733.**

[41] Petition, pp. 19- 20; Rollo, pp. 22-23.

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