

FE CAYAO-LASAM, PETITIONER, VS. SPOUSES CLARO AND EDITHA RAMOLETE, RESPONDENTS.

G.R. No. 159132. December 18, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by Dr. Fe Cayao-Lasam (petitioner) seeking to annul the Decision[1] dated July 4, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 62206.

The antecedent facts:

On July 28, 1994, respondent, three months pregnant Editha Ramolete (Editha) was brought to the Lorma Medical Center (LMC) in San Fernando, La Union due to vaginal bleeding. Upon advice of petitioner relayed via telephone, Editha was admitted to the LMC on the same day. A pelvic sonogram[2] was then conducted on Editha revealing the fetus' weak cardiac pulsation.[3] The following day, Editha's repeat pelvic sonogram[4] showed that aside from the fetus' weak cardiac pulsation, no fetal movement was also appreciated. Due to persistent and profuse vaginal bleeding, petitioner advised Editha to undergo a Dilatation and Curettage Procedure (D&C) or "raspa."

On July 30, 1994, petitioner performed the D&C procedure. Editha was discharged from the hospital the following day.

On September 16, 1994, Editha was once again brought at the LMC, as she was suffering from vomiting and severe abdominal pains. Editha was attended by Dr. Beatriz de la Cruz, Dr. Victor B. Mayo and Dr. Juan V. Komiya. Dr. Mayo allegedly informed Editha that there was a dead fetus in the latter's womb. After, Editha underwent laparotomy,[5]she was found to have a massive intra-abdominal hemorrhage and a ruptured uterus. Thus, Editha had to undergo a procedure for hysterectomy[6] and as a result, she has no more chance to bear a child.

On November 7, 1994, Editha and her husband Claro Ramolete (respondents) filed a Complaint[7] for Gross Negligence and Malpractice against petitioner before the Professional Regulations Commission (PRC).

Respondents alleged that Editha's hysterectomy was caused by petitioner's unmitigated negligence and professional incompetence in conducting the D&C procedure and the petitioner's failure to remove the fetus inside Editha's womb.[8] Among the alleged acts of negligence were: first, petitioner's failure to check up, visit or administer medication on Editha during her first day of confinement at the LMC;[9] second, petitioner recommended that a D&C procedure be performed on Editha without conducting any internal examination prior to the procedure;[10] third, petitioner immediately suggested a D&C procedure instead of closely monitoring the state of pregnancy of Editha.[11]

In her Answer,[12] petitioner denied the allegations of negligence and incompetence with the following

explanations: upon Editha's confirmation that she would seek admission at the LMC, petitioner immediately called the hospital to anticipate the arrival of Editha and ordered through the telephone the medicines Editha needed to take, which the nurses carried out; petitioner visited Editha on the morning of July 28, 1994 during her rounds; on July 29, 1994, she performed an internal examination on Editha and she discovered that the latter's cervix was already open, thus, petitioner discussed the possible D&C procedure, should the bleeding become more profuse; on July 30 1994, she conducted another internal examination on Editha, which revealed that the latter's cervix was still open; Editha persistently complained of her vaginal bleeding and her passing out of some meaty mass in the process of urination and bowel movement; thus, petitioner advised Editha to undergo D&C procedure which the respondents consented to; petitioner was very vocal in the operating room about not being able to see an abortus;[13] taking the words of Editha to mean that she was passing out some meaty mass and clotted blood, she assumed that the abortus must have been expelled in the process of bleeding; it was Editha who insisted that she wanted to be discharged; petitioner agreed, but she advised Editha to return for check-up on August 5, 1994, which the latter failed to do.

Petitioner contended that it was Editha's gross negligence and/or omission in insisting to be discharged on July 31, 1994 against doctor's advice and her unjustified failure to return for check-up as directed by petitioner that contributed to her life-threatening condition on September 16, 1994; that Editha's hysterectomy was brought about by her very abnormal pregnancy known as placenta increta, which was an extremely rare and very unusual case of abdominal placental implantation. Petitioner argued that whether or not a D&C procedure was done by her or any other doctor, there would be no difference at all because at any stage of gestation before term, the uterus would rupture just the same.

On March 4, 1999, the Board of Medicine (the Board) of the PRC rendered a Decision,[14] exonerating petitioner from the charges filed against her. The Board held:

Based on the findings of the doctors who conducted the laparotomy on Editha, hers is a case of Ectopic Pregnancy Interstitial. This type of ectopic pregnancy is one that is being protected by the uterine muscles and manifestations may take later than four (4) months and only attributes to two percent (2%) of ectopic pregnancy cases.

When complainant Editha was admitted at Lorma Medical Center on July 28, 1994 due to vaginal bleeding, an ultra-sound was performed upon her and the result of the Sonogram Test reveals a morbid fetus but did not specify where the fetus was located. Obstetricians will assume that the pregnancy is within the uterus unless so specified by the Sonologist who conducted the ultra-sound. Respondent (Dr. Lasam) cannot be faulted if she was not able to determine that complainant Editha is having an ectopic pregnancy interstitial. The D&C conducted on Editha is necessary considering that her cervix is already open and so as to stop the profuse bleeding. Simple curettage cannot remove a fetus if the patient is having an ectopic pregnancy, since ectopic pregnancy is pregnancy conceived outside the uterus and curettage is done only within the uterus. Therefore, a more extensive operation needed in this case of pregnancy in order to remove the fetus.[15]

Feeling aggrieved, respondents went to the PRC on appeal. On November 22, 2000, the PRC rendered a Decision[16] reversing the findings of the Board and revoking petitioner's authority or license to practice her profession as a physician.[17]

Petitioner brought the matter to the CA in a Petition for Review under Rule 43 of the Rules of Court. Petitioner also dubbed her petition as one for certiorari[18] under Rule 65 of the Rules of Court.

In the Decision dated July 4, 2003, the CA held that the Petition for Review under Rule 43 of the Rules of Court was an improper remedy, as the enumeration of the quasi-judicial agencies in Rule 43 is exclusive.[19] PRC is not among the quasi-judicial bodies whose judgment or final orders are subject of a petition for review to the CA,

thus, the petition for review of the PRC Decision, filed at the CA, was improper. The CA further held that should the petition be treated as a petition for certiorari under Rule 65, the same would still be dismissed for being improper and premature. Citing Section 26[20] of Republic Act (R.A.) No. 2382 or the Medical Act of 1959, the CA held that the plain, speedy and adequate remedy under the ordinary course of law which petitioner should have availed herself of was to appeal to the Office of the President.[21] Hence, herein petition, assailing the decision of the CA on the following grounds:

- THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN HOLDING THAT THE PROFESSIONAL REGULATION[S] COMMISSION (PRC) WAS EXCLUDED AMONG THE QUASI-JUDICIAL AGENCIES CONTEMPLATED UNDER RULE 43 OF THE RULES OF CIVIL PROCEDURE;
- EVEN ASSUMING, ARGUENDO, THAT PRC WAS EXCLUDED FROM THE PURVIEW OF RULE 43 OF THE RULES OF CIVIL PROCEDURE, THE PETITIONER WAS NOT PRECLUDED FROM FILING A PETITION FOR CERTIORARI WHERE THE DECISION WAS ALSO ISSUED IN EXCESS OF OR WITHOUT JURISDICTION, OR WHERE THE DECISION WAS A PATENT NULLITY;
- HEREIN RESPONDENTS-SPOUSES ARE NOT ALLOWED BY LAW TO APPEAL FROM THE DECISION OF THE BOARD OF MEDICINE TO THE PROFESSIONAL REGULATION[S] COMMISSION;
- THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING FOR IMPROPER FORUM THE PETITION FOR REVIEW/PETITION FOR CERTIORARI WITHOUT GOING OVER THE MERITS OF THE GROUNDS RELIED UPON BY THE PETITIONER;
- PRC'S GRAVE OMISSION TO AFFORD HEREIN PETITIONER A CHANCE TO BE HEARD ON APPEAL IS A CLEAR VIOLATION OF HER CONSTITUTIONAL RIGHT TO DUE PROCESS AND HAS THE EFFECT OF RENDERING THE JUDGMENT NULL AND VOID;
- COROLLARY TO THE FOURTH ASSIGNED ERROR, PRC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN ACCEPTING AND CONSIDERING THE MEMORANDUM ON APPEAL WITHOUT PROOF OF SERVICE TO HEREIN PETITIONER, AND IN VIOLATION OF ART. IV, SEC. 35 OF THE RULES AND REGULATIONS GOVERNING THE REGULATION AND PRACTICE OF PROFESSIONALS;
- PRC COMMITTED GRAVE ABUSE OF DISCRETION IN REVOKING PETITIONER'S LICENSE TO PRACTICE MEDICINE WITHOUT AN EXPERT TESTIMONY TO SUPPORT ITS CONCLUSION AS TO THE CAUSE OF RESPONDENT EDITHA [SIC] RAMOLETE'S INJURY;
- PRC COMMITTED AN EVEN GRAVER ABUSE OF DISCRETION IN TOTALLY DISREGARDING THE FINDING OF THE BOARD OF MEDICINE, WHICH HAD THE NECESSARY COMPETENCE AND EXPERTISE TO ESTABLISH THE CAUSE OF RESPONDENT EDITHA'S INJURY, AS WELL AS THE TESTIMONY OF THE EXPERT WITNESS AUGUSTO MANALO, M.D.; [and]
- PRC COMMITTED GRAVE ABUSE OF DISCRETION IN MAKING CONCLUSIONS OF FACTS THAT WERE NOT ONLY UNSUPPORTED BY EVIDENCE BUT WERE ACTUALLY CONTRARY TO EVIDENCE ON RECORD.[22]

The Court will first deal with the procedural issues.

Petitioner claims that the law does not allow complainants to appeal to the PRC from the decision of the Board. She invokes Article IV, Section 35 of the Rules and Regulations Governing the Regulation and Practice of Professionals, which provides:

Sec. 35. The respondent may appeal the decision of the Board within thirty days from receipt thereof to the Commission whose decision shall be final. Complainant, when allowed by law, may interpose an appeal from the Decision of the Board within the same period. (Emphasis supplied)

Petitioner asserts that a careful reading of the above law indicates that while the respondent, as a matter of right, may appeal the Decision of the Board to the Commission, the complainant may interpose an appeal from the decision of the Board only when so allowed by law.[23] Petitioner cited Section 26 of Republic Act No. 2382 or "The Medical Act of 1959," to wit:

Section 26. Appeal from judgment. The decision of the Board of Medical Examiners (now Medical Board) shall automatically become final thirty days after the date of its promulgation unless the respondent, during the same period, has appealed to the Commissioner of Civil Service (now Professional Regulations Commission) and later to the Office of the President of the Philippines. If the final decision is not satisfactory, the respondent may ask for a review of the case, or may file in court a petition for certiorari.

Petitioner posits that the reason why the Medical Act of 1959 allows only the respondent in an administrative case to file an appeal with the Commission while the complainant is not allowed to do so is double jeopardy. Petitioner is of the belief that the revocation of license to practice a profession is penal in nature.[24]

The Court does not agree.

For one, the principle of double jeopardy finds no application in administrative cases. Double jeopardy attaches only: (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent of the accused.[25] These elements were not present in the proceedings before the Board of Medicine, as the proceedings involved in the instant case were administrative and not criminal in nature. The Court has already held that double jeopardy does not lie in administrative cases.[26]

Moreover, Section 35 of the Rules and Regulations Governing the Regulation and Practice of Professionals cited by petitioner was subsequently amended to read:

Sec. 35. The complainant/respondent may appeal the order, the resolution or the decision of the Board within thirty (30) days from receipt thereof to the Commission whose decision shall be final and executory. Interlocutory order shall not be appealable to the Commission. (Amended by Res. 174, Series of 1990).[27] (Emphasis supplied)

Whatever doubt was created by the previous provision was settled with said amendment. It is axiomatic that the right to appeal is not a natural right or a part of due process, but a mere statutory privilege that may be exercised only in the manner prescribed by law.[28] In this case, the clear intent of the amendment is to render the right to appeal from a decision of the Board available to both complainants and respondents.

Such conclusion is bolstered by the fact that in 2006, the PRC issued Resolution No. 06-342(A), or the New Rules of Procedure in Administrative Investigations in the Professional Regulations Commission and the Professional Regulatory Boards, which provides for the method of appeal, to wit:

Sec. 1. Appeal; Period Non-Extendible.- The decision, order or resolution of the Board shall be final and executory after the lapse of fifteen (15) days from receipt of the decision, order or resolution without an appeal being perfected or taken by either the respondent or the complainant. A party aggrieved by the decision, order or resolution may file a notice of appeal from the decision, order or resolution of the Board to the Commission within fifteen (15) days from receipt thereof, and serving upon the adverse party a notice of appeal together with the appellant's brief or memorandum on appeal, and paying the appeal and legal research fees. x x x[29]

The above-stated provision does not qualify whether only the complainant or respondent may file an appeal; rather, the new rules provide that "a party aggrieved" may file a notice of appeal. Thus, either the complainant or the respondent who has been aggrieved by the decision, order or resolution of the Board may appeal to the Commission. It is an elementary rule that when the law speaks in clear and categorical language, there is no need, in the absence of legislative intent to the contrary, for any interpretation.[30] Words and phrases used in the statute should be given their plain, ordinary, and common usage or meaning.[31]

Petitioner also submits that appeals from the decisions of the PRC should be with the CA, as Rule 43[32] of the Rules of Court was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies.[33] Petitioner further contends that a quasi-judicial body is not excluded from the purview of Rule 43 just because it is not mentioned therein.[34]

On this point, the Court agrees with the petitioner.

Sec. 1, Rule 43 of the Rules of Court provides:

Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals, and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis supplied)

Indeed, the PRC is not expressly mentioned as one of the agencies which are expressly enumerated under Section 1, Rule 43 of the Rules of Court. However, its absence from the enumeration does not, by this fact alone, imply its exclusion from the coverage of said Rule.[35] The Rule expressly provides that it should be applied to appeals from awards, judgments final orders or resolutions of any quasi-judicial agency in the exercise of its quasi-judicial functions. The phrase "among these agencies" confirms that the enumeration made in the Rule is not exclusive to the agencies therein listed.[36]

Specifically, the Court, in *Yang v. Court of Appeals*,[37] ruled that Batas Pambansa (B.P.) Blg. 129[38] conferred upon the CA exclusive appellate jurisdiction over appeals from decisions of the PRC. The Court held:

The law has since been changed, however, at least in the matter of the particular court to which appeals from the Commission should be taken. On August 14, 1981, Batas Pambansa Bilang 129 became effective and in its Section 29, conferred on the Court of Appeals "exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions except those falling under the appellate jurisdiction of the Supreme Court. x x x." In virtue of BP 129, appeals from the Professional Regulations Commission are now exclusively cognizable by the Court of Appeals.[39] (Emphasis supplied)

Clearly, the enactment of B.P. Blg. 129, the precursor of the present Rules of Civil Procedure,[40] lodged with the CA such jurisdiction over the appeals of decisions made by the PRC.

Anent the substantive merits of the case, petitioner questions the PRC decision for being without an expert testimony to support its conclusion and to establish the cause of Editha's injury. Petitioner avers that in cases of medical malpractice, expert testimony is necessary to support the conclusion as to the cause of the injury.[41]

Medical malpractice 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.[42] 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 not have done, and that the failure or action caused injury to the patient.[43]

There are four elements involved in medical negligence cases: duty, breach, injury and proximate causation.[44]

A physician-patient relationship was created when Editha employed the services of the petitioner. As Editha's physician, petitioner was 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.[45] The breach of these professional duties of skill and care, or their improper performance by a physician surgeon, whereby the patient is injured in body or in health, constitutes actionable malpractice.[46] As to this aspect of medical malpractice, the determination of the reasonable level of care and the breach thereof, expert testimony is essential.[47] Further, 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.[48]

In the present case, respondents did not present any expert testimony to support their claim that petitioner failed to do something which a reasonably prudent physician or surgeon would have done.

Petitioner, on the other hand, presented the testimony of Dr. Augusto M. Manalo, who was clearly an expert on the subject.

Generally, to qualify as an expert witness, one must have acquired special knowledge of the subject matter about which he or she is to testify, either by the study of recognized authorities on the subject or by practical experience.[49]

Dr. Manalo specializes in gynecology and obstetrics, authored and co-authored various publications on the subject, and is a professor at the University of the Philippines.[50] According to him, his diagnosis of Editha's case was "Ectopic Pregnancy Interstitial (also referred to as Cornual), Ruptured." [51] In stating that the D&C procedure was not the proximate cause of the rupture of Editha's uterus resulting in her hysterectomy, Dr. Manalo testified as follows:

Atty. Hidalgo:

Q:

Doctor, we want to be clarified on this matter. The complainant had testified here that the D&C was the proximate cause of the rupture of the uterus. The condition which she found herself in on the second admission. Will you please tell us whether that is true or not?

A:

Yah, I do not think so for two reasons. One, as I have said earlier, the instrument cannot reach the site of the pregnancy, for it to further push the pregnancy outside the uterus. And, No. 2, I was thinking a while ago about another reason- well, why I don't think so, because it is the triggering factor for the rupture, it could have—the rupture could have occurred much earlier, right after the D&C or a few days after the D&C.

Q:

In this particular case, doctor, the rupture occurred to have happened minutes prior to the hysterectomy or right upon admission on September 15, 1994 which is about 1 ½ months after the patient was discharged, after the D&C was conducted. Would you tell us whether there is any relation at all of the D&C and the rupture in this

particular instance?

A:

I don't think so for the two reasons that I have just mentioned- that it would not be possible for the instrument to reach the site of pregnancy. And, No. 2, if it is because of the D&C that rupture could have occurred earlier.[52] (Emphases supplied)

Clearly, from the testimony of the expert witness and the reasons given by him, it is evident that the D&C procedure was not the proximate cause of the rupture of Editha's uterus.

During his cross-examination, Dr. Manalo testified on how he would have addressed Editha's condition should he be placed in a similar circumstance as the petitioner. He stated:

Atty. Ragonton:

Q:

Doctor, as a practicing OB-Gyne, when do you consider that you have done a good, correct and ideal dilatation and curettage procedure?

A:

Well, if the patient recovers. If the patient gets well. Because even after the procedure, even after the procedure you may feel that you have scraped everything, the patient stops bleeding, she feels well, I think you should still have some reservations, and wait a little more time.

Q:

If you were the OB-Gyne who performed the procedure on patient Editha Ramolete, would it be your standard practice to check the fetal parts or fetal tissues that were allegedly removed?

A:

From what I have removed, yes. But in this particular case, I think it was assumed that it was part of the meaty mass which was expelled at the time she was urinating and flushed in the toilet. So there's no way.

Q:

There was [sic] some portions of the fetal parts that were removed?

A:

No, it was described as scanty scraping if I remember it right—scanty.

Q:

And you would not mind checking those scant or those little parts that were removed?

A:

Well, the fact that it was described means, I assume that it was checked, `no. It was described as scanty and the color also, I think was described. Because it would be very unusual, even improbable that it would not be examined, because when you scrape, the specimens are right there before your eyes. It's in front of you. You can touch it. In fact, some of them will stick to the instrument and therefore to peel it off from the instrument, you have to touch them. So, automatically they are examined closely.

Q:

As a matter of fact, doctor, you also give telephone orders to your patients through telephone?

A:

Yes, yes, we do that, especially here in Manila because you know, sometimes a doctor can also be tied-up somewhere and if you have to wait until he arrive at a certain place before you give the order, then it would be a lot of time wasted. Because if you know your patient, if you have handled your patient, some of the symptoms you can interpret that comes with practice. And, I see no reason for not allowing telephone orders unless it is the first time that you will be encountering the patient. That you have no idea what the problem is.

Q:

But, doctor, do you discharge patients without seeing them?

A:

Sometimes yes, depending on how familiar I am with the patient. We are on the question of telephone orders. I am not saying that that is the idle [sic] thing to do, but I think the reality of present day practice somehow justifies telephone orders. I have patients whom I have justified and then all of a sudden, late in the afternoon or late in the evening, would suddenly call they have decided that they will go home inasmuch as they anticipated that I will discharge them the following day. So, I just call and ask our resident on duty or the nurse to allow them to go because I have seen that patient and I think I have full grasp of her problems. So, that's when I make this telephone orders. And, of course before giving that order I ask about how she feels.[53] (Emphases supplied)

From the foregoing testimony, it is clear that the D&C procedure was conducted in accordance with the standard practice, with the same level of care that any reasonably competent doctor would use to treat a condition under the same circumstances, and that there was nothing irregular in the way the petitioner dealt with Editha.

Medical malpractice, in our jurisdiction, is often brought as a civil action for damages under Article 2176[54] of the Civil Code. The defenses in an action for damages, provided for under Article 2179 of the Civil Code are:

Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Proximate cause has been defined as that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred.[55] An injury or damage is proximately caused by an act or a failure to act, whenever it appears from the evidence in the case that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.[56]

In the present case, the Court notes the findings of the Board of Medicine:

When complainant was discharged on July 31, 1994, herein respondent advised her to return on August 4, 1994 or four (4) days after the D&C. This advise was clear in complainant's Discharge Sheet. However, complainant failed to do so. This being the case, the chain of continuity as required in order that the doctrine of proximate cause can be validly invoked was interrupted. Had she returned, the respondent could have examined her thoroughly.[57] x x x (Emphases supplied)

Also, in the testimony of Dr. Manalo, he stated further that assuming that there was in fact a misdiagnosis, the same would have been rectified if Editha followed the petitioner's order to return for a check-up on August 4, 1994. Dr. Manalo stated:

Granting that the obstetrician-gynecologist has been misled (justifiably) up to this point that there would have been ample opportunity to rectify the misdiagnosis, had the patient returned, as instructed for her follow-up evaluation. It was one and a half months later that the patient sought consultation with another doctor. The continued growth of an ectopic pregnancy, until its eventual rupture, is a dynamic process. Much change in physical findings could be expected in 1 ½ months, including the emergence of suggestive ones.[58]

It is undisputed that Editha did not return for a follow-up evaluation, in defiance of the petitioner's advice. Editha omitted the diligence required by the circumstances which could have avoided the injury. The omission in not returning for a follow-up evaluation played a substantial part in bringing about Editha's own injury. Had Editha returned, petitioner could have conducted the proper medical tests and procedure necessary to determine Editha's health condition and applied the corresponding treatment which could have prevented the rupture of Editha's uterus. The D&C procedure having been conducted in accordance with the standard medical practice, it is clear that Editha's omission was the proximate cause of her own injury and not merely a contributory negligence on her part.

Contributory negligence is the act or omission amounting to want of ordinary care on the part of the person injured, which, concurring with the defendant's negligence, is the proximate cause of the injury.[59] Difficulty seems to be apprehended in deciding which acts of the injured party shall be considered immediate causes of the accident.[60] Where the immediate cause of an accident resulting in an injury is the plaintiff's own act, which contributed to the principal occurrence as one of its determining factors, he cannot recover damages for the injury.[61] Again, based on the evidence presented in the present case under review, in which no negligence can be attributed to the petitioner, the immediate cause of the accident resulting in Editha's injury was her own omission when she did not return for a follow-up check up, in defiance of petitioner's orders. The immediate cause of Editha's injury was her own act; thus, she cannot recover damages from the injury.

Lastly, petitioner asserts that her right to due process was violated because she was never informed by either respondents or by the PRC that an appeal was pending before the PRC.[62] Petitioner claims that a verification with the records section of the PRC revealed that on April 15, 1999, respondents filed a Memorandum on Appeal before the PRC, which did not attach the actual registry receipt but was merely indicated therein.[63]

Respondents, on the other hand, avers that if the original registry receipt was not attached to the Memorandum on Appeal, PRC would not have entertained the appeal or accepted such pleading for lack of notice or proof of service on the other party.[64] Also, the registry receipt could not be appended to the copy furnished to petitioner's former counsel, because the registry receipt was already appended to the original copy of the Memorandum of Appeal filed with PRC.[65]

It is a well-settled rule that when service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence.[66] In the present case, respondents did not present any proof that petitioner was served a copy of the Memorandum on Appeal. Thus, respondents were not able to satisfy the burden of proving that they had in fact informed the petitioner of the appeal proceedings before the PRC.

In *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, [67] in which the National Labor Relations Commission failed to order the private respondent to furnish the petitioner a copy of the Appeal Memorandum, the Court held that said failure deprived the petitioner of procedural due process guaranteed by the Constitution, which could have served as basis for the nullification of the proceedings in the appeal. The same holds true in the case at bar. The Court finds that the failure of the respondents to furnish the petitioner a copy of the Memorandum of Appeal submitted to the PRC constitutes a violation of due process. Thus, the proceedings before the PRC were null and void.

All told, doctors are protected by a special rule of law. They are not guarantors of care. They are not insurers against mishaps or unusual consequences[68] specially so if the patient herself did not exercise the proper diligence required to avoid the injury.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated July 4, 2003 in CA-GR SP No. 62206 is hereby REVERSED and SET ASIDE. The Decision of the Board of Medicine dated March 4, 1999 exonerating petitioner is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

* The Court of Appeals is deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

[1] Penned by Justice Hakim S. Abdulwahid and concurred in by Justices B.A. Adefuin-Dela Cruz and Jose L. Sabio, Jr; rollo, pp. 51-56.

[2] CA rollo, p. 307.

[3] Id.

[4] Id. at 111.

[5] Laparotomy, or abdominal exploration, is a surgical procedure that allows a surgeon to look and to make needed repairs or changes inside the abdominal cavity. (visited May 28, 2008).

[6] Hysterectomy is a surgical removal of the uterus, resulting in the inability to become pregnant (sterility). It may be done through the abdomen or the vagina. (visited May 28, 2008).

[7]Rollo, pp. 57-61.

[8] Rollo, p. 59.

[9]Id. at 57.

[10] Id. at 57-58.

[11] Id. at 58.

[12]Id. at 62-74.

[13] Abortus is an aborted fetus, specifically a human fetus less than 12 weeks old or weighing at birth less than 17 ounces. (visited May 28, 2008).

[14] Rollo, pp. 103-107.

[15] Id. at 106.

[16] Id. at 123-126.

[17]Id. at 126.

[18] Rollo, pp. 129-159.

[19]Id. at 54.

[20] Section 26 of R.A. No. 2382 provides: "Section 26. Appeal for Judgment. - The decision of the Board of Medical Examiners shall automatically become final thirty days after the date of its promulgation unless the respondent, during the same period, has appealed to the Commissioner of Civil Service and later to the Office of the President of the Philippines. If the final decision is not satisfactory, the respondent may ask for a review of the case, or may file in court a petition for certiorari."

[21] Rollo, pp. 54-55.

[22] Rollo, pp. 17-18.

[23] Rollo, pp. 23-24.

[24] Id. at 25.

[25] Tecson v. Sandiganbayan, 376 Phil. 191, 200 (1999).

[26] De Vera v. Layague, 395 Phil. 253, 261 (2000), citing Tecson v. Sandiganbayan, 376 Phil. 191 (1999).

[27] PRC Yearbook, series of 1998.

[28] Remulla v. Manlongat, G.R. No. 148189, November 11, 2004, 442 SCRA 226, 232; Philippine National Bank v. Garcia, Jr., 437 Phil. 289, 293 (2002); Republic of the Philippines v. Court of Appeals, 372 Phil. 259, 265 (1999).

[29] Article IV, Section 1 of Resolution No. 06-342(A).

[30] Domingo v. Commission on Audit, 357 Phil. 842, 848 (1998).

[31] Id., citing Mustang Lumber Inc. v. Court of Appeals, 327 Phil. 214, 235 (1996).

[32] Entitled "Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.

[33] Memorandum for the Petitioner, rollo, p. 345.

[34] Id.

[35] Orosa v. Roa, G.R. No. 140423, July 14, 2006, 495 SCRA 22, 27.

[36] Id.

[37] G.R. No. 48113, June 6, 1990, 186 SCRA 287.

[38] Entitled, "The Judiciary Reorganization Act of 1980" effective August 14, 1981.

[39] Supra note 37, at 293.

[40] Effective July 1, 1997.

[41] Rollo, p. 357.

[42] Reyes v. Sisters of Mercy Hospital, 396 Phil. 87, 95 (2000), citing 61 Am.Jur.2d 337, §205 on Physicians, Surgeons, etc.

[43] Id. at 95-96, citing Garcia-Rueda v. Pascasio, 344 Phil. 323 (1997).

[44] Id. at 96.

[45] Id.

[46] Garcia-Rueda v. Pascasio, *supra* note 43, at 332.

[47] Reyes v. Sisters of Mercy Hospital, *supra* note 42, at 96.

[48] Cruz v. Court of Appeals, 346 Phil. 872, 884 (1997).

[49] Ramos v. Court of Appeals, 378 Phil. 1198, 1236 (1999).

[50] Rollo, pp. 92-101.

[51] *Id.* at 89.

[52] CA rollo, pp. 149-151

[53] CA rollo, pp. 175-179.

[54] Art. 2176 of the Civil Code provides: "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

[55] Ramos v. Court of Appeals, *supra* note 49, at 1237.

[56] Ramos v. Court of Appeals, *id.*

[57] Rollo, p. 106.

[58] *Id.* at 80-81.

[59] Ma-ao Sugar Central Co., Inc. v. Court of Appeals, G.R. No. 83491, August 27, 1990, 189 SCRA 88, 93.

[60] Rakes v. Atlantic Gulf and Pacific Co., 7 Phil 359, 374 (1907).

[61] Taylor v. Manila Electric Railroad and Light Co., 16 Phil 8 (1910).

[62] Rollo, p. 25.

[63] *Id.* at 350.

[64] Rollo, p. 318.

[65] *Id.*

[66] Petition for Habeas Corpus of Benjamin Vergara v. Judge Gedorio, Jr., 450 Phil. 623, 634 (2003).

[67] G.R. No. 145587, October 26, 2007, 537 SCRA 409.

[68] *Id.*, citing "The Physician's Liability and the Law on Negligence" by Constantine Nunez, p. 1, citing Louis Nizer, *My Life in Court*, New York: Double Day & Co., 1961 in Tolentino, Jr., *Medicine and Law*, Proceedings of the Symposium on Current Issues Common to Medicine and Law, U.P Law Center, 1980.

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