

MANAGING THE RELATIONSHIP WITH THE PRESS IN THE CONTEXT OF MEDICAL MALPRACTICE ACCUSATION

George Nicola¹, Irina Maria Gheorghiu^{2,*}, Sanziana Scarlatescu³, Florin Eugen Constantinescu⁴, Paula Perlea³

“Carol Davila” University of Medicine and Pharmacy - ¹Faculty of Medicine, Department of Medical Legal Elements and Malpractice, ²Faculty of Medicine, Department of Restorative Dentistry, ³Faculty of Medicine, Department of Endodontics, ⁴Doctoral School, Bucharest, Romania

Abstract: In recent years, there are more and more allegations of medical malpractice reported in the media, and not rarely they lead to a negative image for the medical personnel involved. This article analyzes the interactions medical personnel may have with media when is accused of malpractice and is intended to offer a model for approaching the relationship with the press in the crisis of an alleged medical error. The most important key factors medical staff need to know are: legal framework applicable to medical practice; the importance of completely and rigorously comply with it; the information that can be provided public without disrespect the patient-doctor confidentiality tenet; basic principles and specific methods of journalism; general elements of a crisis management; principles of a correct positive media approach. Proper and effective management of this kind of situations may contribute to the education both of medical staff and patients in the field of assessment of such situations, thus allowing the avoidance of defensive attitudes of medical practice (“defensive medicine”).

Keywords: malpractice accusation, media, crisis situation, management.

INTRODUCTION

Certainly, the online expansion of the media and the increasing use of the internet as a source of information has shaped the public opinion and offered a new perspective on the rights and obligations of healthcare professionals.

In recent years in Romania there are more and more accusations of medical malpractice. An outrageous aspect of the media is the denigration of this professional category, by providing their own opinions that are often malicious, incomplete, false information and trying to amplify a conflict where most of the time, it does not even exist. These accusations have become more frequent, and they created a negative image of the physicians, irrespective of the truthfulness of the accusations [1, 2].

The newspaper articles often only express the view of the patient or the journalist who often does not have the necessary medical competence to give his opinion about the received medical assistance, expressing the situation subjectively, through the prism

of his own feelings and knowledge. This news has a profound impact on those who listen or read it, most of them, unfortunately, empathizing with the patient's condition. Very few people understand that until the situation is also legally interpreted by the competent authorities, the doctor cannot be accused of malpractice by the people [3].

The main objective of this article is to develop and offer a model for approaching the relationship with the press in the case of medical malpractice accusation, a simple and objective guide for doctors in a crisis situation in accordance with applicable medical practice. A “must-have” tool that any medical practitioner should have, with which will easily manage such crisis situations.

The malpractice accusation in press

After a brief look at what happens in the press in the case of malpractice accusation, a number of important questions arise: does the doctor know how to handle a crisis situation in the event of an accusation of medical malpractice in mass-media or social media?

*Correspondence to: Irina Maria Gheorghiu, “Carol Davila” University of Medicine and Pharmacy, Faculty of Dental Medicine, Department of Restorative Dentistry, Plevnei Avenue 19, 050051 Bucharest, Romania, E-mail: igheorghiu@hotmail.com

Are they properly informed about what to do? Can the doctor answer all the questions of the press, more precisely, does the doctor know exactly what and how to answer the accusations in the press, in order to keep the information in the legal sphere, without breaching the confidentiality of the medical act?

The applicable legal framework is not fully known, especially the one that concerns the vulnerable elements of the medical practice, reaching very easily the situation of being accused of malpractice only because the information is disclosed by the doctor, in an attempt to defend himself. This information is placed in the area of confidentiality, aiming in particular at sharing medical information with third parties, filming and photographing inside the medical unit, participating in medical education. The same sensitive subject is to obtain a fully and complete informed consent from patient, whether is for a medical act or clinical research [4-6].

On the other hand, doctors do not know the techniques of journalism that make a news “ideal” story and that can control the public malpractice claims. Without knowing these methods, there can be no effective management of the relationship with the press [7].

The relationship with the press in the context of the accusation of medical malpractice is mainly based on the complex interaction between doctor and journalist. As far as the journalist is concerned, the information about the journalistic activity is important because we can understand how and what generates an “ideal news” to the audience. From the doctor’s perspective, we can see how an allegation becomes a crisis situation, then how he manages it to control the phenomenon. And last but not least, what does the law applicable to medical practice, regarding in particular confidentiality, say, with the consequences of not fully complying with these regulations if we provide personal data in our response to the press.

The main characteristics of media news

The news is defined by Wikipedia as a journalistic information “that presents the current reality, which it puts in a communicable form, then transmitted through modern mass dissemination techniques” [8].

A definition of news is represented by the short, operative communication of a social process or its results, of a new or newly established social fact, of new knowledge or of a manifestation of ideas [9]. Another definition of news would be that it is a

“novelty”, a report of recent events. In this situation, the news character is given by the fact that what is reported must be extremely current, be important, significant, or unusual for the readers. It is also defined as a fact that could interest a large number of readers, significant, being done at the right time. The news is usually the first account of more important events of great interest to the public [10]. Even so, physicians generally do not know the difference between normal news and news that seeks to influence opinions, the purpose of which is directly reflected in the behavioral or attitudinal sphere of individuals.

It reiterates the characteristics of the so-called “ideal news” in this case, this being a situation of malpractice. The news in the medical field and especially in the case of medical malpractice is the one that has all the qualities of ideal news. Although not all information that has become news has all the qualities of a news story.

The main elements of a news story are the answers that the person making the news must find to the questions that the public could ask him, these being:

- Who? - namely the author of the event;
- What? - reporting the event, what happened;
- Where? - the place of the event;
- When? - time frame;
- Why? - the reason for the event;
- How? - conducting the event;[11]

An important thing in reporting the news is objectivity. Objectivity is gained through the correctness of the information, by citing sources, citing all parties involved in the event, avoiding their own opinions, using verbs of distancing as “claim”, “support”.

The news must have certain qualities namely: novelty, impact, proximity, scope, prominence, uniqueness, conflict, human interest. In the case of medical news, especially in the case of malpractice, it meets all the qualities. Such news has the quality of novelty because it refers to an event at a time with “temporal proximity”, the impact is great, affecting sometimes a large number of people: the patient, his family, the accused doctor, the medical team and /or institution.

The quality of proximity is important especially if it happens in a city with a larger number of inhabitants. The scale of the event is similar to its impact. The prominence is given by the fact that attention is drawn to a group of important people in a community, namely the medical staff. The uniqueness refers to the fact that most often, a case of malpractice is a more unusual,

unpredictable situation. The news has a quality of being based on controversial situations (conflict). The news interests the whole population because it is an experience that anyone can go through at any given time.

Often medical news is much better placed on the page, in the headline of the publication, or when opening the web page, because, in this way, they have a greater impact. Another way to capture and maximize the impact of medical news is to accompany it with images, which can be shocking to the reader. In brief, news with medical interest “sells” much better [12].

The crisis generated by an accusation of medical malpractice

An accusation of medical malpractice, for the doctor, can be considered as a situation of “crisis”. This can be defined as an event that can dramatically interrupt the normal development of a doctor’s practice and that negatively influences his public image, especially in the current conditions of increasing the tendency to criminalize the medical act in public opinion. Or it can be defined as a risky event, a serious, unforeseen change, with a strong financial impact and a negative impact on the doctor’s reputation.

A crisis, as an accusation of more elaborate medical malpractice, can be defined as a specific event or series of events, unexpected and out of the routine that creates high levels of uncertainty and threat or, it is perceived as threatening the highest priority objectives of an organization [13, 14]. On the other hand, the crisis must not be defined only in negative

terms, it is a window to an opportunity, which occurs when the organization (dental, medical, clinical office) is at a point where there is no return. An organization can benefit from these opportunities: The crisis gives birth to heroes (when it is well managed, the attention is directed to those who stand out in those moments; the crisis is accelerating change; the crisis brings to light latent difficulties; the crisis is changing people; the crisis leads to the development of new strategies; the crisis allows the creation of prevention systems; the crisis increases the company’s competitiveness [15].

In evolution, crises can have different durations, different intensities, and can influence the public’s perception in various ways. Some organizations may present themselves and be seen as victims, others may appear and plead guilty, while others may be perceived as criminals. There are situations in which organizations or leaders of organizations, after overcoming the crisis well, can turn into heroes. A recent example, obviously on another scale, is the crisis management in the COVID-19 pandemic from 2020.

The superficial management of a situation of malpractice accusation crisis, can lead to the appearance of unpleasant situations with a series of negative chain reactions (Fig. 1).

In crisis situations, it is necessary to provide quickly, correctly, and honestly the necessary information and required by the press [17], otherwise the results can be extremely negative for the medical personnel [16, 17]. However, the doctors should also take into account that they have a fiduciary duty toward their patients, even after the end of the professional

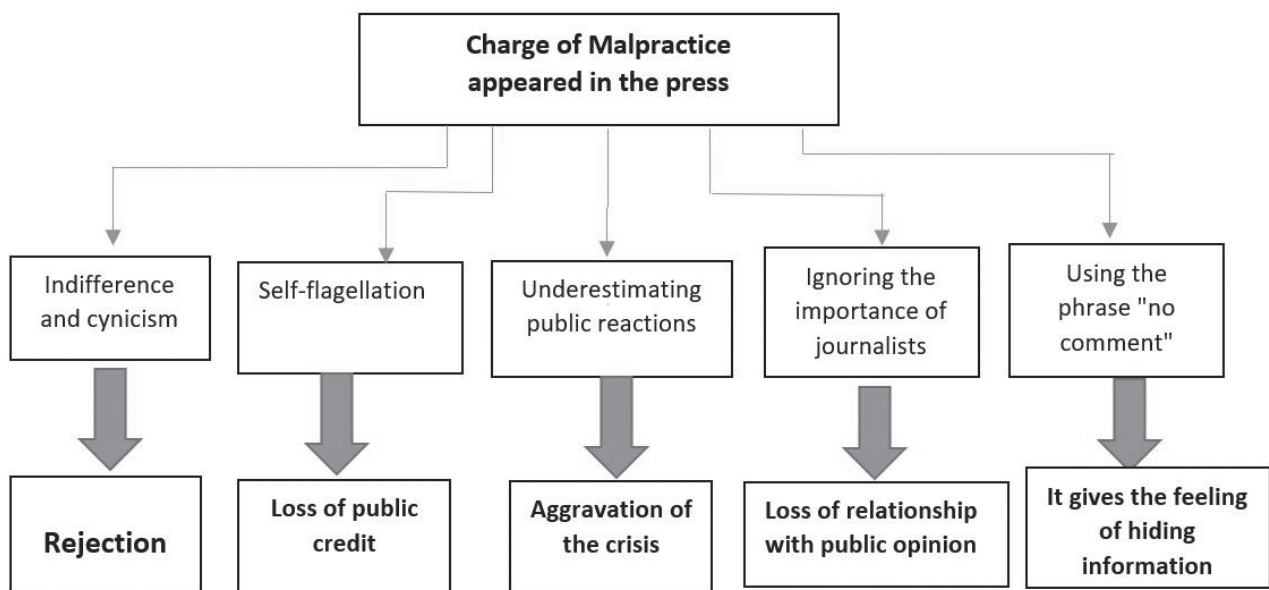


Figure 1. Medical personnel attitudes facing media malpractice accusations that can cause public negative reactions.

relationship, which includes the duty not to disclose information obtained during the interaction with the patient, making the actual defense extremely hard from a legal point of view

In case of the crisis generated by professional liability of medical personnel, in order to obtain a

as clearly and concisely as possible [22].

In the interaction with the press, it would be ideal for the doctor to have an attitude that arouses admiration and confidence, thus being able to regain the public's sympathy. In this technique, inhibitions must be given up, all resources must be used and the

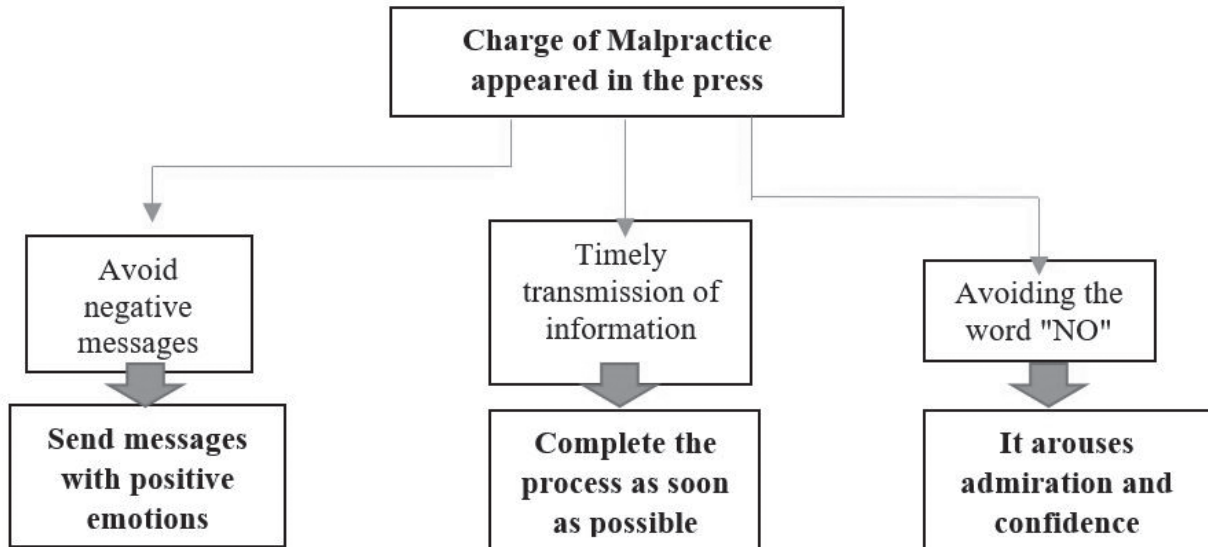


Figure 2. Media informing and influencing the target audience about malpractice accusation.

good result, all crisis management techniques must be correlated with the legal provisions. In Romania the specific laws are: Law 95/2006 regarding health reforms [18]; law 46/2003 [19]; order 1410/2016 [20]; order 1411/2016 [21].

In media relations, the main purpose is not just to answer questions and requests that journalists may have or to simply read a press release. It is to enhance and increase the reputation of an organization or person, to inform and influence the target audience (Fig. 2).

Analyzing the data presented above, we can think that in order to develop a model for managing the relationship with the press, the doctor must take into account two fundamental elements: how to gain public sympathy by taking advantage of “opportunity” and how to keep the information provided in the legal regulation, in the relationship of confidentiality with the patient.

An attitude that should certainly be avoided is that of aggression and nervousness. In this situation, the doctor, if he knows that he cannot control his more angry temperament, must avoid meetings with the press and answering journalists’ questions. One solution to these situations would be to use a single communicator, a single person who would answer journalists’ questions

word “NO” must be avoided as much as possible. The doctor should be appropriate to the situation and take certain risks. Avoid the “no comment!” because it gives the feeling of hiding information, and journalists will do so in such a way as to look for information from other sources, even unverified sources (Fig. 3).

In relation to the press, especially when it becomes a situation of “crisis”, it is recommended to have a communicator, who in the case of news having as subject medical malpractice, is the accused doctor. When the communicator is the accused doctor he must avoid confrontation in negative messages.

He must send messages full of positive emotions and the recommendation is to be sociable, patient, uninhibited, sincere, creative, and inventive, to have the courage and desire to take responsibility. Also, a face-to-face meeting with the accuser would improve negotiations, establish contractual clauses, post-negotiation activity. This should happen in a controlled environment, ideally within a previously agreed framework.

In brief, the effects of a closed and hostile attitude of medical personnel, with justifications and expressions such as “I was not wrong” or “I am not guilty” and situations with the information late provided, can only amplify the crisis (Fig. 4).

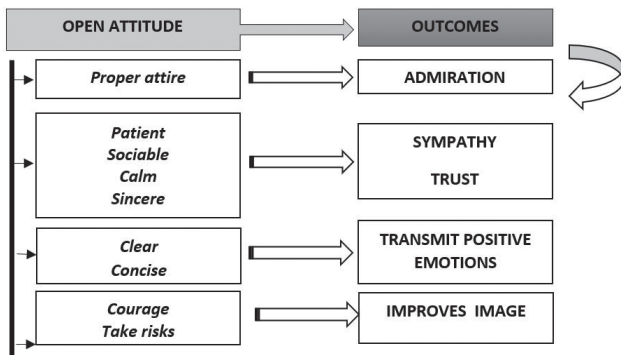


Figure 3. Positive attitude of medical personnel facing press malpractice accusation for proper public outcomes.

Information released in media by medical personnel facing malpractice accusation

In the dialogue with the press, it is also very important “what” we are talking about, what information are being provided. When the doctor is accused of malpractice, the information he can provide is not related to the situation of the accusing patient but must give general information about the created situation.

Attracting legal liability is done in four distinct ways: administrative, civil, criminal, and disciplinary. Malpractice involves only the incurrance of civil liability, i.e. the obligation to cover the prejudices caused to the patient by the doctor, defined as the professional error committed in the exercise of the medical or medico-pharmaceutical act, generating a prejudice to the patient, involving the civil liability of medical staff and service providers, medical, sanitary, or pharmaceutical[23].

The civil legal liability is conditioned by the existence of four factors: the illicit deed of medical personnel, the existence of prejudice to patient, the causal link between the deed and the prejudice, and the existence of medical guilt. The press usually focuses on articles on the prejudice, whether they are material or moral [24].

The journalists, in their attempt to present objective news, will approach the medical staff and will try to find out details from him. But the public will only hear the patient’s version and will tend to agree with him and empathize with the “injured patient.” Because the doctor does not have an agreement given by the patient to discuss the case with the press, he has the obligation to keep the doctor-patient confidentiality. If he decides to give details about the case, it will obviously violate doctor-patient confidentiality and new charges may soon be added to the existing one. That is why the medical personnel will not answer the questions about

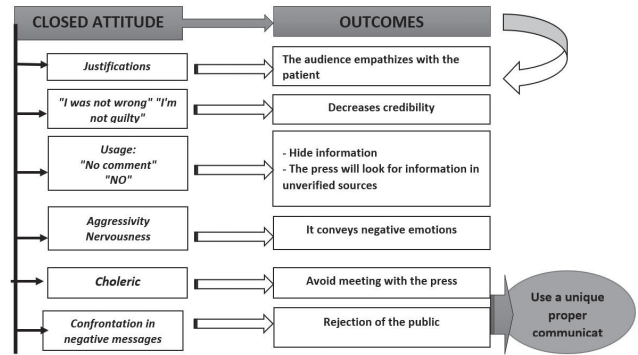


Figure 4. Negative attitude of medical personnel facing malpractice accusation amplify the crisis of medical liability.

the case, but in this case the journalists will try to show him in an unfavorable light. The doctor may even be accused of malpractice just because of the information he communicated in an attempt to himself defend. The doctor’s attitude must comply with the ethics of the medical profession, deontological responsibility and legal provisions [25-27].

Therefore, from the information provided by the doctor, the public must understand that an accusation of malpractice does not always correspond to an actual guilt of the doctor and should be demonstrated after certain legal steps are followed. The public must understand that the teams of experts are involved in this process, and there are certain legal proceedings need to be followed and after all that will determine whether or not there is a medical liability. Under no circumstances should there be any justification from the doctor. Establishing medical staff legal responsibility is a more complex and lengthy process that in the end must prove that it is the consequence of the medical act, and then show that the accused person caused that damage, because we know that most of the time a medical act is done by an entire team. Here the problem of individual versus institutional liability arises [28].

It is therefore recommended to state publicly the procedures that exist, the stage of the investigation at that time, what’s next in the future, in a language that avoids the words “I was not wrong” or “I am not guilty.” Also, the medical staff must specify to the press its legal obligation of confidentiality regarding the medical information about the case. The doctor must learn to communicate very well for such situations and to be always prepared for the risk of malpractice accusation in media.

An approach that provides information quickly, honestly and correctly to the accusation of malpractice in the press brings the advantage that this communication is received and appreciated by the public

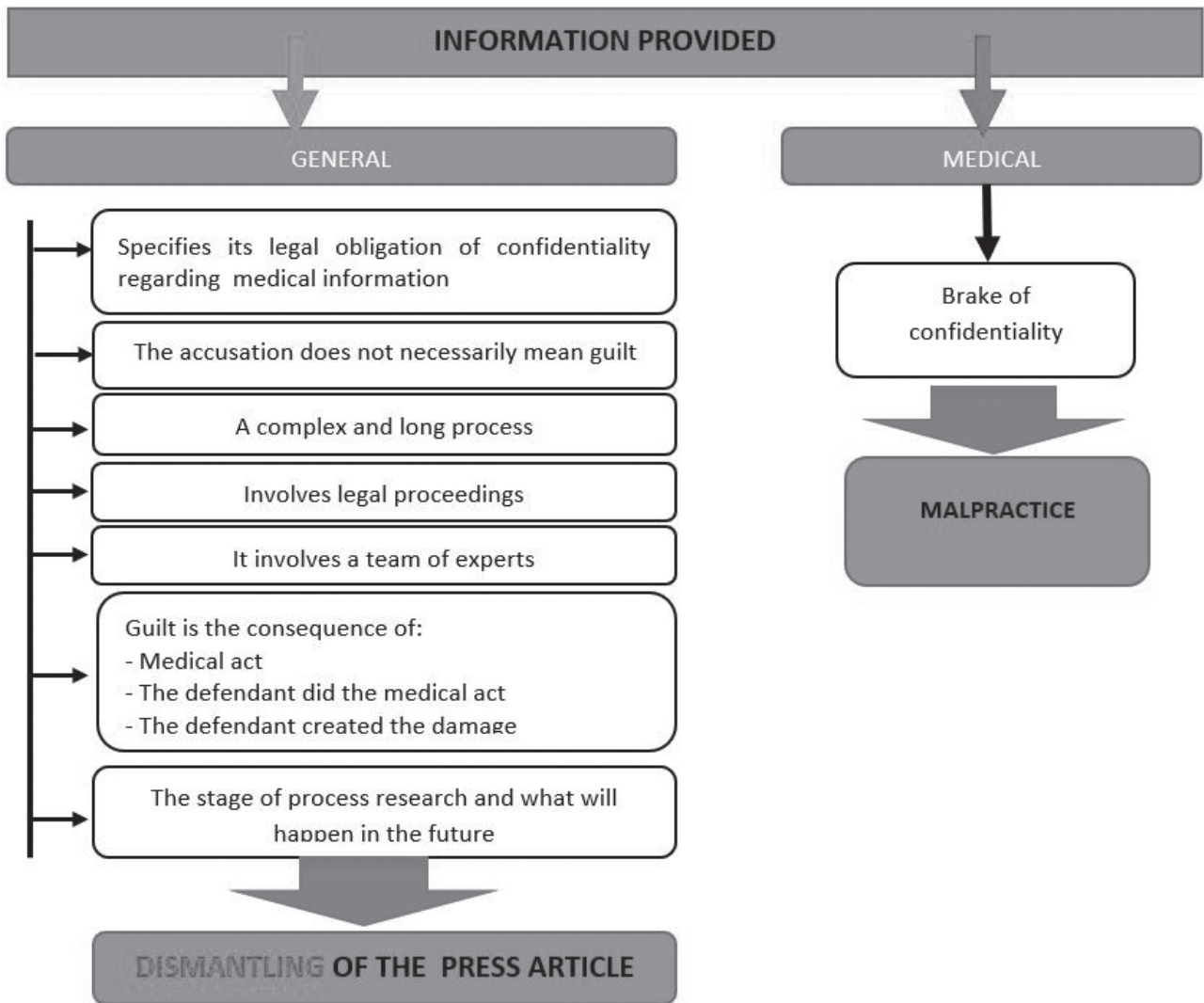


Figure 5. Information released in media by medical personnel facing malpractice accusation.

and can even lead to the dismantling of the defamatory press article (Fig. 5).

Thus, a clear, correct and objective identification of the causes of medical error and of the possibilities of the solution, can contribute to the education of patients and medical staff in the management of such situations, thus allowing a reparation of the consequences of malpractice and avoidance of defensive attitudes of medical practice (“defensive medicine”), with consequences for increasing the costs of the medical act and limiting patients’ access to medical services [29].

It is equally important for the medical personnel to accept and disclosure the medical error when is it the case, so the ethical attitude manifest in all health practice [30, 31].

In conclusion, the medical staff should know that an accusation of malpractice could be an “ideal news” for a journalist. The journalist applies all the

specific media industry techniques he has at his disposal to gain the public’s attention, not rarely to the detriment of the doctor.

Proper and efficient management in relation to the press of malpractice accusation leads to a more realistic and balanced public perception of the situation, avoiding incompletely or incorrectly media approach. There are many factors and many elements to analyze in order to proper manage a press malpractice accusation, and through the proposed approach, public can be educated that a media accusation does not necessarily represents professional medical liability. Finding the truth is a more intricate process of analysis according to certain legal proceedings than a briefly media appearance or short dialogue with the press.

The model presented for approaching the relationship with the press can be a simple and objective guide for medical staff in a crisis generated by

an alleged medical error. The most important elements are: the proper knowledge of the legal framework, entirely respect of it, combined with knowing the specific methods of journalism, and more important the principles of a correct positive media approach.

Conflict of interest

The authors declare that they have no conflict of interest.

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References

1. Nanu A. Malpraxis medical - 7 instrucțiuni de siguranță în practica stomatologică. Editura MedRight Experts. Bucharest; (2013). Romanian.
2. Ioan BG, Nanu AC, Rotariu I. Răspunderea profesională în practica medicală, Editura Junimea. Iași (2017). Romanian.
3. Lupașcu N, Bulgaru-Iliescu D, Rotaru TȘ. Malpractice in the Romanian media: a descriptive study. *Revista Română Bioetică*. 2014; 12(4):96-118.
4. Dogăroiu C, Diac I. The need of informed consent for age assessment in minors – A critical approach. *Rom J Leg Med*. 2017; 25(4):413-417.
5. Preoteasa CT, Buzea MC, Imre M, Ranga CR, Preoteasa E. Reporting ethics approval and informed consent of *in vivo* researches in dental journals. *Rom J Leg Med*. 2018; 26(3):323-328.
6. Hostiuc S. Informed consent [Consimtamentul informat]. Cluj-Napoca: Casa Cartii de Știință (2014). Romanian.
7. Coman C. Comunicarea de criză: tehnici și strategii. Editura Polirom, Iași (2009). Romanian.
8. <https://ro.wikipedia.org/wiki/Stiri>
9. Institutul de Lingvistică "Iorgu Iordan" al Academiei Române. DEX, Dicționarul Explicativ al Limbii Române. Editura Univers Enciclopedic, Bucuresti (1996). Romanian.
10. <http://www.ghidjurnalism.ro/stirea>
11. <http://www.referatele.com/referate/noi/jurnalism/calitatile-unei-stir812014224.php>
12. Moses RE, McNeese LG, Feld LD, Feld AD. Social media in the health-care setting: benefits but also a minefield of compliance and other legal issues. *Am J Gastroenterol*. 2014;109(8):1128-32 (2014).
13. Ulmer RR, Sellnow TL, Seeger MW. *Effective Crisis Communication: Moving From Crisis to Opportunity*. Sage Publications (2011).
14. O. Lerbinger. *The Crisis Manager: facing risk and responsibility*. Erlbaum Associates Mahwah (1997).
15. Meyers GC, Holusha J. *Managing Crisis: A Positive Approach*. Routledge Library (2019).
16. Stan C. *Malpraxisul medical*. Editura Etna, București (2009).
17. <http://scritub.com/jurnalism/COMUNICAREA-CU-PRESA-N-TIMPUL-332461118.php>
18. ***Legea nr. 95/2006 privind reforma în domeniul sănătății modificată și completată. Romanian.
19. *** Legea drepturilor pacientului nr 46/2003. Romanian.
20. *** Ordin Nr. 1410/2016 privind aprobarea Normelor de aplicare a Legii drepturilor pacientului nr. 46/2003; Romanian.
21. *** Ordin 1411/2016 privind modificarea și completarea Ordinului ministrului sănătății publice nr. 482/2007 privind aprobarea Normelor metodologice de aplicare a titlului XV"Răspunderea civilă a personalului medical și a furnizorului de produse și servicii medicale, sanitare și farmaceutice. Romanian.
22. Chiciudean I, David G, Managementul comunicării în situații de criză. Editura Comunicare.ro, București (2011). Romanian.
23. ***Codul civil al României, publicat 2011. Romanian.
24. Nanu A, Georgescu D, Bulgaru D, Berteanu M, Rădulescu C. Using the International Classification of Functioning in Assessing Moral Damage. *Rom J Leg Med*. 2012; 20(1): 77-82.
25. Nanu A, Georgescu D, Voicu V, Ioan B. Place and Relevance of Legal Provisions in the background of medical practice in Romania. *Revista Română Bioetică*. 2011; 9(4): 90-110.
26. Curcă GC. Dilemmas regarding the informed consent in the informative model of the doctor-patient relationship. *Rom J Leg Med*. 2014; 22(2):137-143.
27. Curca GC. Concepts of deontological responsibility and medical malpractice. *Revista Romana Bioetica*. 2010; 8(1): 161-169.
28. Pituru S, Vladareanu S, Paun S, Nanu A. Malpractice and professional liability of medical personnel. *Farmacia*. 2015; 63(2):318-324.
29. Toraldo DM, Vergari U, Toraldo M. Medical malpractice, defensive medicine and role of the "media" in Italy. *Multidiscip Respir Med*. 2015; 10(1): 12.
30. Roche D, Lee WT. Medical errors: teachable moments in doing the right thing. *J Grad Med Educ*. 2013; 5:550-552.
31. Scripcaru G, Astărăstoe V, Scripcaru C. Elemente de deontologie și drept medical. Editura U.M.F., Iași. 1992. Romanian.