

Hospital-Induced Infections: A Serious Crime Against Our Nation's Patients

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Last week, in [a New York Times Op Ed entitled "Coming Clean,"](#) former New York lieutenant governor Betsy McCaughey noted that due to poor hygiene, hospital infections in the United States kill an estimated 103,000 patients every year. That is, the failure of hospitals to enforce cleanliness rules evidently results in the annual death of more patients in this country than AIDS, breast cancer, and auto accidents combined.

Preventable Deaths

Are these deaths the hospitals' fault, or are they inevitable?

A comparison with other countries' experience is telling. McCaughey reports that Denmark, Finland, and the Netherlands have been far more successful than the U.S. in reducing their rates of deadly infections in hospitals. The reason appears to be a greater willingness to follow cleanliness protocols, including those requiring hand washing, the careful cleaning of hospital rooms and equipment, and the wearing of gowns and disposable aprons by hospital staff (to avoid the spreading of pathogens through clothing).

Here in the U.S., the failure to maintain a hygienic environment in most hospitals is such that one in twenty patients contracts an infection during a hospital stay. Even more alarmingly, such infections are becoming increasingly resistant to existing antibiotics.

Many U.S. hospital administrators reportedly contend that enforcing cleanliness rules would be too expensive. McCaughey responds that patients frequently don't pay for the extra care they require due to the infections they contract and therefore cost the hospitals more money than good hygiene would.

More importantly, it is appalling that financial expense would represent the sole "cost" registering with hospital officials. A hospital's mission is ostensibly to cure people and save lives; that it would nonetheless be willing to infect and kill patients if such a course of conduct proved cost-effective, is sickening.

Even Highly Regarded Hospitals Fail to Protect Patients: My Own Story

I was not surprised to learn of the abysmal state of hospital hygiene, because I myself have had the experience of going to a highly regarded hospital in New York City. While pregnant, I became concerned when I felt contractions months before my due date.

I told my obstetrician that I preferred not to go to the hospital, because I found such places depressing and stressful, and because I did not think a hospital visit would actually help me. He replied that I should stick to law and leave obstetrics to him.

When I arrived at the hospital with which my doctor was affiliated, I needed to use the restroom. There was only one available at the time (and for the next three hours, during my stay). When I entered that bathroom, I noticed a cup of urine sitting on the sink. (The restroom also had various bloodstains, smudges, and sprinkles of an unknown fluid).

I assumed that someone must have left the cup of urine there recently, and that there had not yet been an opportunity for a member of the hospital staff to pick it up.

Because the treatment for my early contractions was to administer intravenous fluids, I needed to return to the restroom quite frequently (dragging my IV pole along with me). That cup of dark yellow, pungent urine was there to greet me every time. Over three hours, no one bothered to pick it up, or to clean the bathroom.

As it turns out, urine may not be the only waste product that hangs around at the hospital. Recently, according to McCaughey, a nonfatal infection frequently caused by the ingestion of fecal matter made the rounds at New York's Mount Sinai Hospital. How did such a thing happen? Reportedly, doctors believed, nursing assistants in charge of emptying bedpans and of distributing food to patients did not feel compelled to change clothes between tasks number one and number two. It gives new meaning to the phrase "hospital food."

The Legal Implications of Medical Misconduct

What does the law have to do with any of this? Well, it is a crime to kill people, even without intending to do so, and 103,000 hospital-induced infection deaths is therefore a lot of crime.

In New York State, for example, "a person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person." "A person," in turn, "acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Deadly staph bacteria are known to be rampant in U.S. hospitals. McCaughey reports that almost seventy-five percent of patients' rooms are contaminated with a deadly (and drug-resistant) strain of staph bacteria.

Yet, according to McCaughey - who has founded an organization called the "Committee to Reduce Infection Deaths" -- more than half the time, doctors and caregivers do not even wash their hands before treating a patient.

Though the common practice of wearing gloves may protect the doctor or other caregiver, it does little to avoid contaminating the patient, because unwashed hands touch the outside of gloves while they are being put on.

Given this reality, the failure to wash hands before treating hospital patients - a population whose susceptibility to infection is probably greater than that of the public at large - easily satisfies the statutory definition of criminal negligence. And because of the large number of exposed patients, the risk of death through staph infection is also "substantial and unjustifiable."

In the face of the available evidence, failing to perceive the risk is blatantly unreasonable - and a gross deviation from the standard of care. The risk should be known to anyone who has studied the germ theory of disease, which doctors and nurses presumably all have.

The Act/Omission Distinction Provides No Refuge for Doctors and Hospitals

But isn't the failure to enforce hygiene rules an "omission" rather than an "act" required for criminal liability? No.

Granted, the failure to wash hands or enforce hygiene rules, alone, is an omission. But the invasive treatment of patients after touching infectious agents (and without cleaning one's hands or changing one's clothing) is most certainly an act.

Consider the following analogy. A man turns on the gas at night in an apartment whose windows are all closed. In that same apartment, another person is asleep in one of the rooms. The man leaves the house without turning off the gas.

The failure to turn off the gas may seem like an omission if viewed in isolation. But because the man introduced the gas into the person's home in the first place, his exiting the apartment without turning off the gas is - at best - an act of criminal negligence with respect to the unsuspecting sleeping person.

After a doctor treats a patient in the hospital, he carries that person's germs on his hands and his clothing. If he does nothing to remove these germs before treating the next patient, then his acts - touching the first patient and then touching the second while still carrying pathogens on his person - expose the second patient to substantial and unjustifiable risks.

Death by Physician: An Old Story

The killing of patients by doctors who do not make a priority of cleanliness is an old problem indeed. As Sherwin B. Nuland wrote in The Doctors' Plaque: Germs, Childbed Fever, and the Strange Story of Ignác Semmelweis,

nineteenth century obstetricians in Vienna spread deadly puerperal fever (known also as "childbed fever") to large numbers of obstetrical patients. They did so by resisting a simple protocol (recommended and used with great success by Dr. Semmelweis) of washing their hands with disinfectant before examining any woman in labor. Many doctors, in fact, delivered babies after performing autopsies on women who had died of puerperal fever, without cleaning themselves in between.

Though midwives made a point of washing their hands when they helped women deliver their babies (and accordingly saw very few cases of puerperal fever), the supposedly more professional physicians thought they knew better.

As we have learned so many times before, arrogance and stubbornness can be as dangerous as malice. When district attorneys' offices consider what crime to turn to next, they might consider the inadvertent biological warfare taking place in many of our nation's hospitals as a good place to start.

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