

LAW 101

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MEDICAL MALPRACTICE

Very recently a major newspaper featured an article on malpractice by doctors of a government provincial hospital. A child was brought to the hospital, complaining of stomach pains. It was then prescribed that he needed to take some oral suspension. But no amount of coaxing could convince the child to take the medicine. So this doctor decides to introduce the suspension intravenously as the child was then on dextrose. Thereafter, the child went into spasms and died. The doctor must have been under the (mis) impression that oral intake is synonymous with intravenous application.

The case brings to mind the principle laid down by the Supreme Court in *Ramos vs. Court of Appeals*, 231 SCRA 584 on the application of the doctrine of *res ipsa loquitur* ("the thing speaks for itself") in medical malpractice cases.

"Thus, *res ipsa loquitur* has been applied when the circumstances attendant upon the harm are themselves of such a character as to justify an inference of negligence as the cause of that harm.

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 loquitur* 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.

Hence, in cases where the *res ipsa loquitur* 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, and inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur*.

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.

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 patient's jaw was under anesthetic for the removal of his tonsils, and loss of an eye while the patient plaintiff was under the influence of anesthetic, during or following an operation for appendicitis, among others."

Significantly, the Supreme Court also found the anesthesiologist to be negligent because she failed to conduct a pre-operative evaluation of the patient prior to the administration of anesthesia considering that the operation was an elective surgery [as distinguished from an emergency case].