

Consilium XL¹**Paolo Zacchia, *Quaestiones Medico-Legales*,****Translated by Julia Roever****PhD Student, Stanford University**

Case Description

A young man in good general health fell ill. He developed a fever, albeit not very high, and had pain on the right side of his body, but not very strong. He had a slight cough and some moderate difficulties breathing. An unskilled doctor who had been called paid little attention to the pain and told the young man that he was suffering from a feverish catarrh and prescribed something that scarcely had any effect at all. On the second day, fever and pain increased, and his other symptoms slowly grew stronger, but still the doctor did not consider the patient to be seriously ill, but barely treated him. On the third day, when fever and pain increased even more, another doctor who had been called, said that he suffered from *pleuritis* and that he should be bled that very same day.² The first doctor, who was older, suddenly arrived, made disparaging comments about the younger doctor, and gave the patient a medication made from manna to drink.³ The [patient's] temperature continued to rise, the sputum was without comparison, the pain became excruciating and yet, [the doctor] could not bring himself to draw the patient's blood, although it was now the fourth day. On the fifth day, all symptoms grew worse. Two more doctors were consulted and blood was drawn [from the patient]. On the sixth day, he deteriorated more; he brought up pus, beyond description, mixed with blood and suffered from

¹ This translation is based on the Latin original text as published in: Paolo Zacchia, *Quaestionum Medico-Legalium Tomus Tertius quo continentur Consilia et Responsa LXXXV ad Materias Medico-Legales pertinentia; necnon Decisiones S. Rotae Romanae*, Lyon: Anisson & Posuel, 1726.

<<http://www.google.com/books?id=GoQ-AAAACAAJ>>

² *Pleuritis* literally means "pain the side." It is difficult to match historical accounts of illness with diseases that we know today because of the differences in medical theory then and now about the causes and symptoms of disease. *Pleuritis* therefore may or may not have been the same disease that we now call pleurisy.

³ Manna here refers not to the edible substance mentioned in the book of exodus, but to the sap from a tree, the Manna Ash (*fraxinus ornus*), which has a medicinal value as a mild laxative and a weak expectorant.

acute pain. On the eighth day, he exchanged life with death. An erudite scholar, who had been in attendance during the last days of the illness, was asked to assess the ignorance and malice of the [first attending] doctor.

Summary

1. Case taken from Galen, in which a woman died because of a failure to draw blood from her.
2. Certain errors of doctors are punishable according to divine and human law, but the doctor cannot be blamed for a fatal outcome.
3. The doctor is obliged to follow established and safe opinions when treating patients.
4. Deviating from the common opinion of the experts except for the strongest of reasons is a grave error and altogether punishable.
5. Of the omission, and/or the delay of drawing blood from a patient who eventually died.
6. Those who are adverse to drawing blood are to be prohibited from practicing medicine. Further details to follow.
8. Internal inflammations are not to be treated with loosening medications, unless there are compelling reasons for it.
9. Willful ignorance has within it grave fault, therefore it can be punished.
10. A doctor who commits an error based on malice while treating a patient can be charged with homicide when the patient dies.
11. Gross negligence is a grave fault, and grave fault is malice, therefore gross negligence is malice.

It is nothing new that there are some doctors who are so fanatically in favor of bleeding patients that they believe that they can cure any illness solely by repeatedly drawing blood and nothing else, even those [illnesses] that derive from extreme cold or those in which heat needs to be avoided and those where nature needs a light breeze. By contrast, there are also those who dread bloodletting so much that they believe they commit a crime when they draw blood, even if there is

an urgent indication for it. But about the former [cases] another time. I will now turn to the present case. Galen (*lib. de Vene sett. contra Erasistr.*) has spoken out sharply against doctors of this kind who are against bleeding patients out of religious reasons and in the passage referenced above he relates the story of a certain woman, twenty-one years old, who was destitute after her menstruation and whom they treated. They refused to draw blood from this woman, they then watched how she developed difficulties breathing and immediately afterwards how she suffocated and died, much to their disgrace. It appears that medical errors of this kind have to be expiated (punished), even though a fatal outcome is not to be blamed on the doctor (*Leg. illicitas, § sicuti. Medico ff de off. praesid*). But he can be accused if he left the patient because of inexperience, and such a delict cannot go unpunished under the pretext of human frailty, as it was maintained in that very instance. Therefore, in the case at hand it appears that the doctor acted in gross and careless ignorance, referring more to his own absurd opinion than to the common opinion of all doctors and, ultimately, of all people, therefore it can be said that because of this the patient died: because the doctor is obliged to follow those teachings that are safe and without danger and that have been accepted and canonized by the greater part of the most eminent doctors, he is not allowed to treat [patients] according to his own opinion or according to the teachings of certain other heretical doctors, whose opinions are far away from [those of] the community and from reason, as I said in *Sum. Ang. in verb. Medicus n. 1* and supported by other Canonists, also according to *lib. 6. tit. 1. q. 7 n. 2* it ensues that the community, at least the consensus among the community of experts, is more in harmony with the truth than the opinions of certain individuals who in their daily practice try to heal even the most pernicious diseases. While they are busy maintaining [their views] not only by the spoken word, but by action and by their newly tested experience, they are the certain ruin of most, as can be observed in the many cases that are being told.

Because of this, it is a grave error to deviate from the generally valid and approved opinion and do the opposite of what it dictates. This has to be subject to severe punishment, because it usually causes [a] man's utter ruin, which happens particularly if the consensus among men is very strong and based on tradition, as is

the case here, in which it has to be openly examined to what degree this doctor has contributed to the death of the patient by not following the highly common opinion shared by all, because it is evident, according to the basic principles of medicine and the most important and experienced doctors that drawing blood is so to speak exceedingly necessary in most illnesses, particularly with inner inflammations, as is the case with *pleuritis*, for which it is generally accepted as a most useful and advantageous remedy that can be used unlimited over extended periods, so that from its omission or its delayed use we have seen many sick being taken from our midst within days, as it surely happened in the case at hand, because if at the beginning of the illness the patient would have been bled, he could have been cured with little trouble, because while the inflammation was not yet intense, it could have been easily extinguished by bloodletting.

But it is surprising that some recoil from using such an easy, advantageous, necessary, and safe remedy when curing illnesses and that they cannot provide a single solid and true, or at least probable and apparent, reason by which they are motivated, but are restrained by their irrational error or as if they were mentally disturbed, from which neither persuasion nor reasoning can dissuade them, therefore it seems right to reaffirm that they are to be prohibited from practicing medicine, therefore if they practice medicine and the patient dies because of such errors, they are to be severely punished. And as I may have said, this is not only true when the doctor fails to draw blood altogether in illnesses that require it, but also when the blood is drawn too sparsely or barely at all, or when bloodletting is delayed, as in this case; but whoever said that not drawing blood and draw too little blood is not the same, like that stupid doctor whom I have mentioned in the passage referenced above, who for diseases caused by blood, and for which bloodletting was indicated in very robust young men out of necessity, and for which nobody would come up with a contra-indication even in their dreams, prescribed that there be drawn a few ounces of blood here and there, because he believed that in this way he could avoid that others would draw blood and follow his conviction by drawing such a tiny amount of blood, by which no harm would be done to his patients, or so he claimed, as opposed to [the harm supposedly being done] through the drawing of a

copious amount of blood, as other doctors had advised to do. Here it has to be said that not drawing blood at all has to be considered the same as not drawing blood in time, but [to wait for] the convenient time to arrive; for what use is it to draw blood in cases of internal inflammations when the beginning of the illness has passed and the inflammation has become much worse, having failed to draw blood in the beginning, surely in our case drawing blood on the fifth day did not help anything with the disease having grown worse, and in which the patient died due to the delay, as is evident.

It is true however, that it is not only his crass ignorance that speaks against the doctor, who did not recognize the disease through his own fault, but malice is [not]⁴ detected in addition, because he carried out the particular opinion of the older, [rather] than [doing something] for the health of the patient, so that he would not be perceived as following the opinion of the younger doctor, who recognized the disease while he himself had not recognized it, after having put effort into it, he did not want to draw blood out of malice, whence he out of extremely bad judgment gave the patient a medication made from manna, that not only during the beginning of the disease was not appropriate, but was strongly forbidden, which was much more evident in the need for drawing blood; because internal inflammations are not to be treated with medicine that loosens the bowels, because inflammations of this kind are always associated with an acute fever, in which according to the authority of *Hippocr. lib. 1 Aphor. 29* one rarely has to purge, and with great caution, because they tend to turn into a *pleuritis* at a higher rate, in which the loosening medication interrupts the sputum, whose purgative effect in this illness is highly desirable, and on whose purgative effect all hope of recovery rests, while due to its withholding patients succumb. But here should also be given something soothing, as all agree, however, according to the most common opinion of Paul, Rafis, and other high authorities of medicine, drawing blood always takes precedence.

⁴ The Latin original has the word *non* here, meaning “not,” but in my opinion, this is an error, the word *non* should be disregarded. The context and following phrases show that Zacchia thought that if it could be proven that the doctor refused to draw blood after the second doctor became involved in order to conceal his ignorance and protect his reputation, this would constitute malice.

And from this it can be easily deduced that this doctor either did not recognize the disease out of ignorance, or out of malice did not make use of a remedy, although he should have been very convinced of its necessity. Therefore, if he acted out of ignorance, not recognizing the illness, he has to be punished, because this is willful ignorance, which contains within it gross negligence, which is to be punished already [according to] *cit. L. Illicitas, §. sicuti, ff. de off. Praesid.* for this doctor did not know what generally all doctors, not only the most eminent ones, [but also] popular and inferior [healers] know and are obliged to know, and without knowledge of which doctors cannot practice their profession, which is called willful ignorance, as is evident here.

But how much more severely does this deceitful doctor have to be punished, refusing to draw blood out of malice, so that it would not appear as if he had learned from the younger doctor how to recognize the disease; for the doctor who acts with evil intent while treating a patient, if the patient dies, is to be charged with homicide. Nor can it help him if it is said that he acted out of negligence rather than out of malice, because this was gross negligence, and even more so the more evident the necessity to draw blood was and the more clearly the younger doctor had inculcated this to him, and without doubt did not deserve any excuse, because gross negligence is intent, *Leg. Magna. ff. de Rer. & Verb. significat.*, and major intent is malice. *L. ead. ibid.* (the same law, at the above reference), so from the beginning to the end gross negligence is malice, because in this case negligence coincides with malice, from which follows that the doctor here has to be punished so to speak for acting with malice; furthermore from if it turned out that the doctor acted out of willful ignorance, he can never receive a corporal punishment, as I have said with the authority of the legal experts *cit. Lib. 6 tit. 1 q. 2 n. 1*. However, this does not have a place [meaning: this does not apply], where he acted out of malice, especially if the patient died because of it; but whether we have to say here that it was actual malice, or just presumed malice, I will leave to the legal experts to decide.

