

The Evidence-Based Medicine Statistics in Medical Malpractice Liability

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Abstract

Evidence-Based Medicine (EBM) has been interpreted as the conscientious, explicit and judicious use of current best evidence in making decisions about the care of individual patients; moreover, the clinical practice guidelines, which were developed through EBM, are becoming one of the popular judicial evidences in medical malpractice litigation. Besides, the medical statistics which constitute the main portion of EBM evidence have also promisingly gained their judicial significance.

The complication rate of the treatment and the ratio of side effects of medication are such kind of EBM Statistics, which were themselves collected by scientific methods and were objective figures in nature. Accordingly, these figures in some degree, correlated to the “foreseeability” concept judicially; however, in inquiring the liability of physicians, these figures should not be apply totally independent from the statistics-related clinical practice guidelines.

Meanwhile, the survival rate or cure rate of the patients with certain disease with or without treatment implies some evidence of causal relation. These kinds of EBM Statistics indicate the so-called “abstract causation”, which by way of deduction could infer the conclusion of “personal causation”. However, the parameters between these two sets of causation should be as similar as possible to draw an accurate conclusion.

There was a famous “Loss-of-Chance Doctrine”, which allows plaintiffs to recover money without having to show that it was more likely than not that the

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charged medical negligence made the difference in their recovery or survival, by way of regarding the reduction in patient's survival rates itself (i.e. the EBM Statistics) as the suffered injury caused by medical malpractice. Nevertheless, this doctrine actually could never at all alleviate patient's duty of proof in causation between the malpractice and the injury suffered especially herein in patients whose survival or cure rate happens to be lower than 50%. We would rather recognize the cellular level injuries of "health rights" in these patients and recovered as such by applying these EBM Statistics to determine the compensation extent.

Hopefully this article will help in utilizing EBM Statistics as the judicial evidence and the fairness and justice of jurisdiction can finally be realized in medical malpractice litigations.

Keywords: evidence-based medicine, statistics, clinical practice guideline, survival rate, cure rate, loss-of-chance doctrine, medical malpractice, injury, causation, liability