

Medical Malpractice, Michael Barrett

- CP: Good morning and welcome to your Legal Rights here at WilentzTV.com. My name is Chris Placitella. I'm a partner here at the office of Wilentz, Goldman & Spitzer and we're here this morning to talk about medical malpractice. Our guest today is Michael Barrett. He is a partner with the firm of Wilentz, Goldman & Spitzer, a state-wide renowned medical malpractice attorney. He has handled many high profile cases and gotten tremendous results on those cases. Before we start, a few ground rules. As always the information that is communicated here today is not specific legal advice to any of you who are watching, but rather general guidance to give you an idea about the kinds of questions you might to ask an attorney or just some general guidance on issues that you would like to know about. Now, during the course of this broadcast, you have the ability to actual ask us questions. Those questions will come through on the monitor over here to my right and as I see those questions, I will ask those questions for Michael. They may not be the exact question that you asked. I may generalize them so that I do not reveal the source of the question, but feel free at any time during the broadcast to submit the question. You will see it on the interface form that this broadcast is being sent out on over to the right of where the window is. So here we go and I'm going to start with Michael Barrett. Good morning, Michael.
- MB: Great, good morning.
- CP: How are you?
- MB: I'm very good. It's my pleasure to be here.
- CP: So happy to have you. Now, let me start right out because you are the attorney that is in the news in the case that has probably received more notoriety than any malpractice case in the state of New Jersey in the last twenty years and that is the Cullen case. I think I've heard it referred to as the Angel of Death case. And you represent the family who filed the first case in that action, correct?
- MB: That's correct, Chris. William Cullen is a nurse who has worked in various hospitals, nursing homes in the New Jersey and Pennsylvania area for the past 17 years or so. And in October of 2003, several months ago, it was determined by the legal authorities, the prosecutor in Somerset County, that he had been involved in the deaths of a number of patients over the years in the prior year at Somerset Medical Center and at years prior to that at several other hospitals and nursing homes in New Jersey and Pennsylvania.
- CP: Now, what is it alleged that he did specifically did wrong?
- MB: He overdosed patients, intentionally. Mr. Cullen, according to his own statements to the Court and to the prosecutors involved in the case, took it upon himself to kill patients that were either critically ill. He's portrayed himself as an angel of mercy but, in fact, has, again, taken upon himself to kill patients many of whom

may have survived the illnesses that they were suffering from at the time that he committed these acts – intentional overdoses of medications.

CP: So what was it that he, um, just made a judgment as to who should live and who should die, who might live and who might die? How does that happen?

MB: Well, it's in the early stages at this point. He has only made one or two Court appearances and he hasn't had an opportunity yet to tell his whole story other than the fact that he's acknowledged that in the one year period that he worked at Somerset Medical Center prior to his being terminated by the Medical Center and that was in the end of October of 2003. He says that during that one year period he killed between 12 and 15 patients. Now, he has already been charged ...

CP: Who did he tell that to?

MB: He told that to the Somerset County prosecutor. He told that to the judge that he appeared before, after he was arrested, the day after he was arrested, and at that point in time he wanted, he expressed the desire, to enter a plea of guilty to the charge that he was facing at that point in time, killing a patient. At that time the Court appointed a public defender to represent him and the investigation is continuing. Understandably, many families in New Jersey and Pennsylvania are quite disturbed particularly those families whose loved ones died suddenly in the institutions that he worked at under unexplained circumstances. I mean, these families, at this point in time don't know whether or not their loved ones were victims of Nurse Cullen and many of them have brought their concerns to the Prosecutor's Office here in New Jersey, Somerset County and also in Pennsylvania and right now there is actively an investigation or many investigations being performed in these two States to see if the victims of Nurse Cullen can be identified.

CP: That's horrible. Did he have a drug of choice? How did he do these things.

MB: Well, from what we see at this point, and again, the entire story is far from clear but we know in the case that he's been charged with he intentionally administered a drug called Digoxin to a patient, to a critically ill patient. Digoxin is a heart slowing medication and this medication resulted in this individual's death. He has also acknowledged that in at least one other case he has administered insulin to patients which has caused death in at least one or more patients. So those are the two drugs that we know about at this point in time, but there may be others. The investigations are still pending.

CP: Now, you have actually filed the lawsuit?

MB: We have at this point in time we have been in contact with the hospital. We've been in contact with their attorneys. We're attempting to get information from them. There are certain procedures that we have to go to but in the very near future a lawsuit will also be filed because that's really the only way that we can put people under oath, people in the hospital administration, people who know

really what's been going on with this Nurse Cullen. We want to find out from the hospital what they know about Nurse Cullen, when they hired him, when did they start picking up the irregularities with patients. At this point in time we only know the tip of the iceberg and it's going to require us, as I said, put people under oath and get sworn testimony from them before we can really start to ascertain on a more detailed basis what really happened at Somerset Medical Center during the past year before this individual was fired.

CP: Tell us a little about your client.

MB: Our client is Reverend Gall. He was a priest in Somerset County. He had come down with an illness. He was hospitalized at Somerset Medical Center. Nurse Cullen wasn't even one of his nurses. Nurse Cullen did work in the critically ill section of the hospital, taking care of patients who are critically ill but he was not involved directly in Reverend Gall's care. But, again, according to his own admission, he took it upon himself to intentionally administer this medication, Digoxin, which resulted in Reverend Gall's death.

CP: That's horrible. Now, you say that you're going to investigate the circumstances under which this happened. You're not saying that [inaudible]

MB: _____ would be private and, I mean, after all he has acknowledged that he essentially, intentionally killed Reverend Gall and at this point in time we don't have access to him, learn more from him because he's in the Somerset County Jail awaiting trial on this charge and awaiting the results of the investigation of the other deaths that he'll be _____.

CP: Well, what is your understanding of the nature of the law, the duty of a hospital or a health care institution under these kinds of circumstances? This is not your every day run of the mill medical malpractice case, I take it.

MB: No, it's not really because we're talking from certainly from Nurse Cullen's standpoint of intentional actions. You know, these are intentional killings. Malpractice implies a mistake, an unintentional mistake that hurts a patient. So, there is a difference between this situation and what we would traditionally look at as a medical malpractice situation. But from the hospital standpoint there are a number of issues.

CP: How can you blame the hospital? This guy killed people.

MB: Well, there are a number of, most of the people out there may have been following the papers. This individual has a very, very long track record in New Jersey and Pennsylvania. Beginning in the mid 1980's, I don't know if I know the exact number, but he's worked at between 10 and 15 hospitals and health care facilities and on a number of occasions, five or more occasions, he would either be asked to leave, he was fired for various types of inappropriate conduct. Some of which involved medications and this individual has a track record. Our law makers in Trenton are apparently looking at a number of potential ways to pick

this type of situation so that a nurse or someone else whose in charge of taking care of essentially helpless people, critically ill people, cannot slip through the cracks and bounce from one hospital to the next nursing home to the next hospital and kind of stay one step ahead of the law and have no accountability for the things that he has done over the years. So, you know, we hope that our law makers can come up with a procedure or a set of rules that would prevent somebody like this from going from one to the other. Now, so, when you say, Chris, you know, what did the hospital do here? We certainly have questions regarding the background check that they either performed or did not perform regarding Nurse Cullen before he was hired. And even more importantly than that, if Nurse Cullen is telling the truth and again what he has told the Court and what he has told prosecutors is that in the one year period that he worked at Somerset Medical Center, before he was terminated, he killed between 12 and 15 people there. So, we have a lot, and again, by overdoses, intentional overdoses of medications, so we have a lot of questions as you might imagine for the hospital as to what mechanism did they have, what when people were dying, when patients were dying for reasons that patients wrongly don't die for.

CP: What you're saying is if I'm a doctor treating a patient, then I have 8 or 9 patients in a row die from mysterious circumstances? Certainly you would think that the hospital would check out to see what was going on with that doctor and the same thing with the nurse.

MB: That's right. I mean and nurses again have access to medications and really when you're talking about patients in critical care units and most of the patients that he says that he killed were patients who were very ill and eventually couldn't take care of themselves. When did the light go off in the hospital that something is going on here, that patients are dying because of overdoses? When did the hospital start to put together and what mechanism was there at the hospital to allow them to put together some type of plan, some type of approach? Patients were dying from overdoses. This shouldn't be happening in a hospital.

CP: Well, I have a question. My question is ... isn't there some kind of procedure in a hospital that when someone takes out drugs from the closet where they keep the drugs that they are checked out so that if drugs are missing, that there is some kind of investigations done? I would think that would be standard procedure.

MB: There are safeguards that are designed to prevent the unauthorized use of medications by nurses or anybody else. I mean, you know, these medications, many of them are life saving and many of them are life threatening. So, there are procedures. Mr. Cullen has acknowledged to authorities that he has, and he was able to over the years, find his way around those procedures and gain access to medications that he should not have access to and administering to patients that he wasn't even caring for. So, again, one of the questions we have for the hospital, in this case, is how is he able for that period of time to elude potentially the safeguards that they had in place. I mean, medications that are given unauthorized and intentional to kill a patient ... those are medications that are

missing. Who was watching the shop at the hospital? Were they picking up on the fact that medications were disappearing for no apparent reason, and, if so, what did they do about it and, you know, why did this go on if Mr. Cullen is telling the truth, for a year?

CP: I want to come back to the Cullen case and this seems like a very egregious circumstance that, you know, I've heard of analogous cases that were, I think, probably a lot more commonplace than people realize and that is that similar issues seem to arise in nursing home litigation all the time. That being that, there are groups of people with a certain amount of education may be even limited on how to handle these people and they're not feeding the people on a regular basis, they are medicating them wrong. Am I correct that it may be one of the most egregious things you can ever come up with but there are other cases that aren't that different in terms of breach of duties and responsibilities?

MB: Well, you're right, Chris. I mean, here we're talking with the Cullen situation of intentional murder, but there are many, many settings in the health care world where people are not receiving optimal health care, especially those who can't fend for themselves. The elderly, the ill, you know, people who are not in a position in a nursing home bed or a hospital bed to stand up for themselves and say "what are you doing here? You're not taking care of me. I'm not eating properly. I'm not receiving my medications on time." There are many, many situations in nursing homes and in some hospitals where these patients are suffering and there have been statistics that have been published by the National Health Institute _____ medical errors and a number of people on a yearly basis that actual die from medical errors and it's shocking. More people die from medical errors on a yearly basis than die in car accidents, for example. And, you know, there is a culture out there in some institutions that when medical errors happen, they are not reported. The overwhelming majority of medical errors are not reported. Patients and they're families don't even know about them. You know, the lucky patients are the ones who have family members who are looking very closely after them who visit them on a daily basis, who, you know, make sure that the staff in the nursing home or the staff in a hospital are administering medications, bringing meals on a regular basis. But there are many, many patients who don't have that safeguard and are really at the mercy of some providers, you know, certainly not all but some providers who are giving the optimum care.

CP: You know, I've read statistics indicating that a majority of medical errors are caused by a very small percentage of help care providers and you're certainly, you would agree, would you not, that the overwhelming majority, 99% of all physicians are, you know, abiding by their oath and doing the very best they can and, you know, sometimes things have happened. You would agree with that, correct?

MB: We have the best health care in the world in this Country. As you say, 99% of the physicians and nurses, people taking care of patients, are devoted. They are doing

they're absolute best and they provide the best health care in the world. Unfortunately, that doesn't happen 100% of the time and when less than optimal care is provided to a patient, those situations, unfortunately, tend to become unreported and in many, many occasions patients don't even know about them.

CP: Because these days _____ growing up, not that long ago, but when we were growing up you become a doctor and everyone tells _____ make money, a lot of money automatically. But these days a lot of people they go into medicine because, not that they didn't back then, but _____ the same profit incentives. No, they're there for a benevolent reason just like they were when we were growing up as well and sometimes you just have _____ that, not malpractice, correct?

MB: No. You know, a doctor is, you know, the law recognizes that medicine is not an exact science and doctors are not guarantors that a patient is going to recover from an illness that they treat. Doctors are required under our law simply to act reasonably. To act in accordance with what the average practitioner in their field would do under a given set of circumstances. No more, no less so when we talk about what is malpractice, the short definition is a doctor makes a mistakes and a patient suffers because of it. _____ more involved in that under our law. Doctors are required to practice in accordance with a standard. That standard is what the average and reasonable practitioner in the field would do under a given circumstance and if they depart from that standard, potentially, there's a claim for malpractice. If they comply with that standard, even if the patient doesn't do so well, there is no malpractice.

CP: OK, good, that's I want to start. I want to start with a building block of what really is malpractice, just for guidance. We're talking about New Jersey law now but some of these principles I know stem beyond New Jersey. I was talking about understanding what is and what is not malpractice in a general sense. Just because somebody is hurt that does not survive, there are circumstances in a hospital setting or a health care setting doesn't mean it's malpractice, correct?

MB: That's correct.

CP: OK.

MB: Whether or not malpractice exists does not depend upon the result. The result of a terrible illness or a death, a doctor is not responsible in malpractice simply because a patient dies or doesn't do well as a result of a surgery or a treatment. Again, the doctor is held to that standard of care that the average practitioner in his field is held accountable to and if he complies with that standard, even if the patient doesn't do well, there is no malpractice. So, in a general sense, if a client calls us as a situation where a loved one has passed away ...

CP: Right.

MB: You know, obviously, in most cases, the family is distraught, the family is concerned, they don't understand the circumstances where their father or their husband or they're wife passed away. In some cases, they simply call us because they haven't been given enough information really to understand why the death has occurred or why this serious illness has occurred and we help them, we try to help find those types of answers through the review of medical records and through consultations that we have with physicians in the particular field of expertise who know, obviously, much more about us regarding the medicine and we follow their advice as to the circumstances and whether or not, potentially, there was any malpractice involved.

CP: Well, I've known you for a long time and I know that you're not, you generally don't and won't take even close calls that you believe that, you know, mistakes are made and, you know, that unfortunately, is part of life and I applaud you for that. I think one of the things that we have learned and I think the doctors can learn, and you tell me if I'm wrong, is that communication with your patients, you know, goes a long way from raising the level of inquiry by a patient to determining whether there is malpractice or not because people don't get information something bad happens and all of a sudden they think that there's something _____ going on. Am I correct?

MB: People are looking for answers and they first turn to their doctor or the doctor who was taking care of their loved one and sometimes it does not appear to be adequate communication between the doctors. You know, lack of communication isn't, you know, singled out of the medical profession. There are lack of communication in all professions but certainly in the emotional setting of a death of a family member if there is not adequate communication between a physician and the family regarding the circumstances, _____ families, at the point, will contact an attorney to look further into it and try to get some independent view on what really happened.

CP: Now, before you actually discuss kind of with the standard of care is, for lack of a better term, what if the doctor had to do something that was outside, say, the norm for what somebody in his position, one of his colleagues or her colleagues would do? Now suppose that a physician has an option of two or three different things that they can do in order to treat or deal with a patient, one being preferred another being maybe a little more riskier, or less preferred, if you do the less preferred, is that malpractice?

MB: Not necessarily. A doctor has a right to use what's called his discretion or his judgment to choose between one of multiple accepted means of treating a patient. I mean as long as he chooses a course of treatment that comports to the standards set by the physicians in his field of expertise, he's not going to be held responsible under malpractice law. However, a patient ultimately has the right to determine what course his or her treatment will take based upon the doctor's advice. So, it's incumbent ultimately upon the doctor to explain to the patient what the treatment options are, what the risks are for, if there's possibly two or three different

