

THE STANDARD OF CARE IN TRADITIONAL MEDICINE AND MODERN MEDICINE

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ABSTRACT

Keywords:

*Traditional Medicine;
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Standard of Care;
Standard of Practice;
Duty of Care;*

This study aims to present the standard of care used in both traditional and modern medicine with attempts to compare and contrast between each of them. The issue of concern is whether practitioners in both medicine are required to adhere and follow the same standard of care or each one has its own standard differ from other. This should follow by necessity to define these standard in either field to the general public, patients, and practitioners in order to protect them. Such standard is considered as the cornerstone in the field of medicine; its practitioner is, thus, required to be committed in acting in accordance to the given standard and failure to do so could result to certain legal implications and actions. Therefore, practitioners in the field of medicine are held liable if found to be negligent in any of the given standard of care. So, to examine this issue, this study explains the definition of the standards of care in traditional and modern medicine firstly. Following by stating the limitations of the given standards of care in each field of medicine secondly. At the latest, it will mention the critical view of standard of care in both medicine. Overall, the main outcome of this study is that the given standard of care whether in the field of traditional or modern medicine is different

in either field. This professional differences lead absolutely to vary their legal principles and rules in malpractice cases. Because of a very unique philosophy, set of principles, definitions, and standard for traditional medicine in contrast to modern medicine.

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INTRODUCTION

The importance of practice is emphasized as a general rule in medicine on the extent of the commitment of the practitioner to the given standard of care in the field of medicine. This commitment begins at the diagnosis stage of a patient and ends at the treatment stage. The nature of the disease, type of remedy, and practice determines the standard of care. Traditional medicine has been present since the existence of man on earth, but medicine itself evolved and progress due to time which is what is now called as modern medicine.

As stated by WHO Traditional Medicine Strategy: 2014-2023, traditional medicine is “the sum total of the knowledge, skills, and practices based on the theories, beliefs, and experiences indigenous to different cultures.” Further explained, traditional medicine is based on the tradition of a group of people and not on any scientific evidence that can prove its success, effectiveness, and assurance of safety of treatment. Its treatment rests solely on human capacity and natural materials devoid of chemical compounds. It holistic approach aims to treat not only the symptoms of a given malady but also the psychological and physical aspects of a patient. Moreover, it considers also the personality and the circumstantial background of a patient upon diagnosis and treatment.

In contrast to traditional medicine, modern medicine as defined by Segen's Medical Dictionary, is “a general term for conventional health care based on the ‘western model’ of evidence-based practice for diagnosing and treating disease.” It stems from and is dependent on clinical research, on the safety and effectiveness of certain medicines, and testing of new treatments and models to given diseases. The primary focus of modern medicine is the injured part of a patient following its treatment through chemical medicines and surgery without considering the other parts that are not indisposed. This kind of approach does not give personal attention to the individual, psychological, and biological condition of a patient.

According to these definitions, traditional medicine has existed long before modern medicine was established. For this, they differ a lot from

each other in terms of its historical background, ideas of its forefathers and founders, medical beliefs, methods, and means of diagnosis and treatment of diseases.

OBJECTIVES OF THE STUDY

The importance to show that Standards of care whether in the field of traditional or modern medicine is different. The core of standard of care is to provide protection to the public, to a patient specifically, so that the medical practitioner is restricted to the scope of medicine being practiced and face legal liability in case of violation. Patients are protected by means of the standard of care that prevents and reduces the chances of exposure to malpractice of legal and/or unqualified medical practitioners. Likewise, the medical practitioner is protected by the standard of care that the practitioner is required to adhere to while practicing a therapeutic model, which in turn, ensures the availability level of skill and professionalism. This also raises the level of performance and skill of a practitioner. In addition, the more knowledge a practitioner gathers within the given standard of care, the higher level of care may be given to patients and vice-versa.

METHODOLOGY OF THE STUDY

The methodology of this study is primarily dependent on the theoretical approach that is based on the collected medical and legal references which established the standard of care in both traditional and modern medicine. The methodology employed in this study is gathering of relevant data from specific documents so as to analyze given materials in order to come up with a more comprehensive understanding of the concepts of standard of care in both traditional and modern medicine. The related literature used in this study is based on textual analysis of related materials taken from books, articles, journals, and online literature.

ORGANIZATION OF THE STUDY

This study is divided into three sections as follows:

- I. It states the definition of the standards of care in traditional and modern medicine.
- II. It explains the limitations of the given standards of care in each field of medicine.
- III. It makes a comparison and contrast of the standards of care in both traditional and modern medicine.

Definition of the Standard of Care in Traditional and Modern Medicine

Standard of care, broadly defined by R.B. Vukmir, is “a duty to use the degree of care and skill, which is expected of a reasonably competent practitioner in the same class to which he belongs acting in the same or similar circumstance.” Specifically, it is a given set of accepted medical basics and principles among medical practitioners in given circumstances. The main objective is to meet minimal health requirements. Standards not only assure the kind of quality care that should be given in medical practice, but it also determines the measure of the liability and non-liability of a practitioner in the given field of medicine.

Noticeably, there are some significant points related to the definition of standard of care professionally and legally that should explain separately as follows:

- (a) Standard of care is considered as a legal terminology and not a medical one. Standard of care is used only in a court of law where there is a case of malpractice in the field of medicine. However, in the medical field, the standard of practice is considered as a rolling term in health legislation, unions, and professional organizations. Both terminologies serve as guiding principles to all medical practitioners. The standards determine what a medical practitioner should and should not do. The former serves as the legal indicator of what kind of care should be given while the latter one is the professional indicator of the required style of care.
- (b) The standard of care in medical terms is “a diagnostic and treatment process that a clinician should follow for a certain type of patient, illness, or clinical circumstance.” In contrast, its legal definition states it as “the level at which the average, prudent provider in a given community would practice”. Putting the two given definitions together, standard of care is the scope of the duty of a medical practitioner to exercise care and skills expected from any practitioner who specializes in a similar profession under the same circumstances and conditions. The duty of giving care is the epitome and the basis of standard of care; without which, it is impossible to set the standard of care.
- (c) The standard of care functions as measurement of the degree of excellence and efficiency exercised by a medical practitioner in delivering health care to patients. The level of performance of each medical practitioner is assessed and measured by the level or degree of the care and skill that is delivered by the same medical practitioner in the same profession and circumstance. A practitioner is a person who has a relevant average intelligence, expertise, and experience vis-à-vis other practitioners. In the medical field, the standard of care refers to the degree of care

given by a medical practitioner in both phases of diagnosis and treatment. This also includes the errors made in diagnosis of the condition of a patient and pharmacological doses.

- (d) The standard of care in the field of modern medicine is the expected practice that each doctor should follow and do in given circumstances. These standards are considered as unified, stable, and consistent because they are based in scientific evidence and objective definition on how to treat and handle patients rather than on the personality of the user. Any medical practitioner is expected to adhere to and comply with the standards of care in his/her chosen field of specialization. This is a legal obligation imposed by the law. Furthermore, any violation against the given standard of care that leads to injury on a patient could be grounds for breaching of duty and subject to medical malpractice case. A medical practitioner cannot be held liable for malpractice unless a violation from the given standard of care is proven.

Whereas the definition of standards of care within traditional medicine is different not just among their practices, but also among countries, states. Because sometimes it depends on the kind of cultural system and legacies that were acquired in practice of treatments. Traditional practitioners, in general, define standard of care as “conform to [their] education, training, and peer expectations”. While the definition of standard of care for each traditional particular practice like that of a chiropractor, for example, is “that degree of care, diligence, judgment, and skill which is exercised by a reasonable chiropractor under like or similar circumstances.”

Other laws recognize the standard of care as a description of malpractice that requires disciplinary sanctions. The other laws are focused on the definition of standards of practice for traditional treatment rather than the former. Traditional medicine laws determine the scope, standards, and guidelines for practice, training, and qualification standards that must be met by a traditional practitioner of medicine.

- (e) The standard of care in traditional medicine is not about the usual practice that is present in modern medicine. It is connected to the practices that are consistent with the style of education and training of its practitioners. Traditional medicine though fixed on therapeutic rules; its standards of practice within a single model vary among schools and medical doctrines that developed the education, training curriculum, and scope of practice. Each school or doctrine of a particular traditional model creates its own standards for practitioners so as to assess the quality of care provided by them to its practitioners. The difficulty lies on the

identification and regulation of all those traditional doctrines by a legislator.

Limitations of the Standard of Care in Traditional and Modern Medicine

Standard of care is established by duty of care and based on level of care that is required from a medical practitioner to perform. A practitioner must possess a certain level of skill and professional competence that meet the level of care expected in performance of tasks. The practitioner is then evaluated based on the aforementioned criteria including medical knowledge. This degree of knowledge and skill is what is known as the standard of care, which medical practitioners are required to adhere to. Thus, the term standard of care is connected with the terms of duty of care and level of care. So, it should determine how their relationship is happen and its scope by give a brief definition for each one.

- (a) Duty of care is "the legal obligation to provide reasonable care while performing any acts or making any omissions that could foreseeable harm others." This duty serves as the preliminary requirement for any medical practitioner to have. In medical practices, this duty of care refers to the obligation to exercise care but not necessarily arrive at a result after having followed the standard of care. In modern medicine, the duty of care refers to an agreed contract of either parties, or a mandatory obligation on the side of the medical practitioner alone as in emergency cases. However, in traditional medicine, the therapeutic relationship is an agreement between the traditional practice of the practitioner and the patient, and this serves as a special treatment. This contract establishes the duty of care which provides the standards and obligations that should be implemented on both sides of the relationship.
- (b) Level of care that is expected from a professional practicing modern medicine is the degree of skill and competence that a professional in the same field and situation possess. This "usual person" is very ideal in nature, so the courts of law depend on an objective criteria that determines how an ordinary person with ordinary care would act in given circumstances. This is the standard that is used in identifying the liability or non-liability of a modern medical practitioner in terms of malpractice. The liability or non-liability is determined how other practitioners in the same field would have managed a patient under the same or similar circumstances.

In traditional medicine, the expected level of care from traditional medicine practitioners is determined first by the condition of the patient. Methods, approach, and philosophy of practice come in second. This is

the reason the identification of the level of care varies from one practitioner to the next and from one country to another. For example, the standard of care for Acupuncture practices in British vary from standard of care in Canada. Even, the difference includes medical colleges within the Canada states.

Also, level of care depend on the medical tradition practiced by a group of people. The traditional medical practitioner takes into account first the personality of the patient and the interaction of the patient with the therapy. Next, it depends also on the level of skill and competence of the practitioner among its exclusive counterparts and not among the traditional community as a whole. As such, traditional medicine schools set each of their own standards that govern their own brand of practitioners and are not determined by other thoughts.

As a result of the role and nature of duty of care and level of care in both fields, it is difficult to determine the legal liability for malpractice of a traditional medicine practitioner compared to a modern medicine practitioner. Because each practitioner in traditional medicine has a personal means and manner of treating a patient. However, the standard of care in traditional medicine is dependent on the qualifications and competencies of a traditional practitioner. Being so, the traditional therapeutic model should be measured and assessed according to the required qualifications of a traditional medicine practitioner and the level of performance for such practice.

Accordingly, the standard of care and practice in modern medicine is always uniform and standard despite the existence of the many techniques it has. In contrast to this, traditional medicine is characterized by independence and personal therapeutic models. Each traditional model has its own set of standards of care which differ from one traditional therapeutic model to the next. Each traditional school is governed by its own independent style and standards of treatment. Modern medical schools, on the other hand, follow a systematic method of education and training, whereas, traditional schools follow multiple curriculum and methods of education and training for its practitioners even if the practitioners live in the same community.

Given the situation mentioned above, the problem, which most types of traditional medicine are facing at present, is the absence of uniform standards of practice. It relies on natural resources for medicine, but it is not based on any scientific evidence that can prove its effectiveness or efficiency. Included in this problem are the differences in the practices and varied learning and training approach of such uses. As a result, it becomes difficult to determine the standard of care for a specific practice and general criteria for the practice of traditional medicine.

In order to solve the problem mentioned above, it is the responsibility of the law to determine the standard of care in traditional medicine because it is a legal matter. The law identifies in cases of malpractice if the standard of care for a patient was considered and provided especially now that there is an increasing number of malpractices. The law should also help the patient be knowledgeable of the standards of care required in administering medical treatments. Moreover, it is the mission of the law to give protection both to the public and all medical practitioners. Lastly, patients must be given protection of their right to choose the treatment that they want and protection from the treatment without fear of malpractice.

Critical view between Traditional Medicine and Modern Medicine

Below are some given similarities and differences between traditional and modern medicine based on the definition and limitation of standard of care.

Similarities

- (a) The medical practitioner is restricted to follow the given duties and standards of care stipulated in the field of medicine when practicing a given profession as the law requires it.
- (b) Any act lower than the required level of care or deviation from the given standard of care that results to injury of a patient is subject to medical malpractice and legal liability of a medical practitioner.
- (c) The primary task of any medical practitioner whether in the field of traditional or modern medicine is to give care to a patient and not to achieve any kind of particular result.
- (d) The level of care that is required in traditional and modern practice of medicine stresses the availability of degree of care from any ordinary practitioner in any given situation.
- (e) The task of setting the standards of care in both traditional and modern medicine is based on the law and is considered as a purely legal matter.

Differences

- (a) The expected level of care from a professional practicing modern medicine is the degree of skill and competence that is expected from all professionals belonging in the same level and situation. In contrast to this, the level of care expected from practitioners of traditional medicine depends primarily on the nature of the client, with methods, approach, and philosophy of therapy as secondary.
- (b) Unlike modern medicine wherein there exists legality against malpractice for its practitioners, traditional medicine has no unified and stable standard of care for its practitioners.
- (c) The duty of care of traditional practitioners is always based on an agreed contract that binds both parties about the therapeutic

relationship. Modern medicine, on the other hand, either has a contract of agreement or none as in the case of emergency.

- (d) From the point-of-view of the courts of law, the standards of care of modern medicine are not applicable to a traditional practitioner. The courts of law prefer to apply the specific standards for each practice model separately.
- (e) The standards of care of a practitioner of modern medicine are determined by the objective criterion that measures the liability of a doctor on the behavior of another doctor belonging in the same level and competence. In traditional medicine, the standards of care are determined by the skill and professional competence of a practitioner following the requirements of a therapeutic model.

CONCLUSION

In conclusion, the standards of care in traditional and modern medicine are obviously very different from each other. The standard of care of traditional medicine is linked to the personality of the patient and the practice done. Traditional medicine views treatment of a patient in a more personal manner, which becomes the basis of the traditional medicine practitioner in determining the standard of care including the legal liabilities that go with it. On the other hand, the standard of care of modern medicine is based on scientific evidence and clinical tests which are devoid of the circumstances surrounding a patient. The objective criterion defines and determines the level of standard of care in modern medicine.

The medical legislature should bear the important step of organizing and setting the standard of care in traditional medicine while considering its unique nature, historical background, and therapeutic philosophy. By doing so, traditional practices will finally have a stable and uniform set of standards that are dependent on the professional and legal aspects in order to combat medical malpractices as seen also in modern medicine. Then, this standard will become applicable from judicial in determining the liability of practitioners in malpractice cases.

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