

Independent Study Paper Title : The Legal Problem on the Burden of Proof in Tort Case: Case Study on the Medical Malpractice

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## ABSTRACT

In previous times, the relationship between patients and medical practitioners did not involve legal aspects because patients believed that medical practitioners were givers with kind hearts, determination, knowledge and intention to cure patients. This relationship is changing at the present time.

This research focuses on the professional liability on the details regarding the burden of proof of medical malpractices by studies based on documentary research and online databases. From research, it is found that the patients need effective treatment from medical practitioners who have the duty of care of the patients well being. When the medical practitioners lack the standard of care and hence cause damage, patients need law to compensate for such damages. However, most of the time, patients lose the case for compensation. As shown by statistics, more than 50% of patients will lose the case.

From above, the problem of patients is the burden of proof in malpractice cases which are bear on plaintiff's who do not have enough sufficient medical evidence because it is very difficult to get such evidence from medical practitioners and it does not seem to have good cooperation from a group of persons who have the same occupation as medical practitioners. Besides, there are no provisions which shift the burden of proof to the defendant for the malpractice cases under Tort Law.

Therefore, there should be an amendment to change the provision of Tort by adding a new provision which describes the presumed fault of malpractice to shift the burden of proof to the defendant by following the previous presumed fault liability sections and using the legal doctrine "res ipsa loquitur" as the model for the section's content.