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# Heart to Heart

With Philip S. Chua, M. D.

## Criminalizing Physician Errors

**Please use this quotation:**

**“Passing this bill  
will be like  
using a shotgun  
to kill a fly  
on the patient’s  
forehead.”**

There is a move in congress to reintroduce a 2002 proposal that will criminalize medical mistakes.

Under this bill, if the physician commits any error in making a diagnosis or treatment (even an honest one and even if he/she is the best or a most competent physician), the blunder will be considered a criminal act, and the physician “shall be punished by *prison mayor* and the cancellation of the license to practice the medical profession and a fine ranging from Five Hundred Thousand Pesos to One Million Pesos in the discretion of the court...”

This expectation of perfection and infallibility should be accorded only to God. Physicians are humans and not God, and therefore, imperfect. Besides, medicine is not an exact science and is not perfect, either. I fully agree that criminal acts by anyone must be dealt with severely. Mistakes that should be considered criminal are those made with malicious intent or motive, with greed, immorality, etc. So long as the licensed physician practices within the peer-accepted standard of care in the medical community, he/she should be accorded just and fair treatment under our laws, and not be singled out as a profession (like what this bill is in effect doing), depriving physicians equal protection under our constitution. The proposed bill clearly violates the equal protection clause in Article III, Section 1 of the 1987 Constitution.

**Fifty percent of lawyers on any given court case are on opposite sides. And only one side will be judged right, and win, and the other, wrong, and lose. Shall we then seek to criminalize half the lawyer population on all these cases, “for the error in judgment in defending a wrong”?**

**Very obviously, the proponents of this move did not do their homework and do not realize that the passage of such a bill will make medical care more costly and cause patients all over the country to suffer, most especially the poor. Such a legislation will force physicians to retire early or abandon medical practice for fear of being penalized and jailed, and thus lead to less available healthcare manpower in the country. On the surface, the bill claims to protect the rights of the patients, but its actual implication and resultant effects will be detrimental to every Filipino. All one has to do is to look at the United States. The major reason why the cost of healthcare in America has escalated to its current ridiculous and untenable degree, holding the patients and their family hostage, was a similar bill passed by a well-intentioned American Congress that resulted in skyrocketing court awards and malpractice insurance premiums that are devastating the US healthcare system today.**

**That law ultimately resulted in the healthcare crisis the Americans are now vehemently opposing. Why? Because the proposed bill then that they originally thought would protect them and their rights, and improve healthcare at a more affordable price, has since (after the bill was enacted into law) shown its true color and effects: a very expensive medical care even to the middle class Americans, a poorer quality healthcare, and a lesser accessibility to medical care. Today, the US congress is revisiting these issues because the Americans are angry and up in arms, demanding their legislators to rectify their previous grave mistake.**

**In the Philippines, we already have adequate laws under the Revised Penal Code to protect patients against incompetent, erring and criminal physicians. All we have to do is to enforce the existing laws. As a matter of fact, there have been various significant awards in our courts to indemnify the victims on whom proven medical malpractice was committed. Passing this bill and enacting it into law will be like using a shotgun to kill a fly on the patient’s forehead. Adding this legislation to what we already have in the books will realistically not add more protection or benefits for the patients. On the contrary, it will penalize the Filipinos.**

**In America today, many hospitals are closing and numerous medical services (like the emergency room and obstetrical care), have been cut down, if not totally abandoned. Many physician specialists have relocated or retired, or have chosen to seek other jobs, because malpractice premiums have escalated to an unaffordable level. All these are taking place in the United States today, because of a bad piece of legislation. Once this proposed bill in our Congress passes, it will also hold the Filipinos and the country hostage for a long foreseeable future. It has taken the United States decades to even start to correct this past mistake.**

**I could foresee a bleak future for healthcare and its delivery in the Philippines, if we repeated the same mistake the American people and their legislators had made in the past.**

**Are we, Filipinos, dumb, stupid and gutless as to sit idly by and allow our Congress to make a similar legislative faux pas?**

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