THE REST OF YOUR LIFE

Bicycling as a Way of Life

For Dr. Christiane Stahl, bicycling is not so much a hobby as a way of life. She's been commuting by bike to school or work since she was 8 years old.

"I use public transportation, but the nice thing about a bike is you're kind of out there on your own," said Dr. Stahl of the department of pediatrics at the University of Illinois at Chicago. "It's a little more individual and gives you more time for reflection. You're not distracted by all the social interactions that are going on when you take public transportation."

She bikes 5 miles to work "if it's not actively precipitating and the wind is not more than 20 miles an hour against me."

Even Chicago's harsh winter days don't stop her. "I have little booties that I put over my bike shoes and big puffy bike gloves and hats to wear under my helmet," she said.

No special tires are required during her winter commutes because the route she takes includes a network of bike lanes that "get cleared out pretty well" by the city's snowplows. However, degradation of the bike chain from road salt is an ongoing issue.

Among her favorite vacations are bike trips she's taken through Germany, Wisconsin, and South Carolina. Her easiest and most spontaneous trip "was on the back of a tandem bicycle around the Chicago area—taking advantage of the great trail system, the outdoor concert area of Ravinia Park, and views of Lake Michigan," she said. "Plus, I was in beeper range the whole time, and it's easy to make callbacks from the back of a tandem so no cross-coverage arrangements were required."

An advocate for bike safety, Dr. Stahl has served as a medical volunteer for Bank of America's Bike the Drive, an annual bike ride along scenic Lake Shore Drive that benefits the Active Transportation Alliance (formerly the Chicagoland Bicycle Federation), a not-for-profit biking, walking, and transit advocacy organization. She noted that as more people take up bicycling as an inexpensive and environmentally friendly commuting tactic, upgrades in the separation of auto and bicycle traffic will be needed.

"Until we do that, we're going to see rising rates of injury, because I think more people will turn to bicycling as a way of getting around," she said. "Compared with Europe, we have so far to go in terms of creating safer bikeways."

A devoted helmet wearer, Dr. Stahl had one serious biking injury: a low-speed face plant when she dropped a wheel into a sidewalk grate. "Fortunately, I was just outside the hospital emergency room," she said. "I got a fair number of facial lacerations, but I didn't have any head injury."

Although she knows bicyclists who set goals to improve their speed or endurance, Dr. Stahl just enjoys the ride.

COURTESY DR. CHRISTIANE STAHL

Dr. Christiane Stahl bikes 5 miles to work every day in Chicago.

"For me, biking is not goal oriented," she said. "That's one of the chief joys of riding my bike: to explore, look around, and see things." ■

By Doug Brunk

E-MAIL US YOUR STORIES

The purpose of "The Rest of Your Life" is to celebrate the interests and passions of physicians outside of medicine. If you have an idea for this column or would like to tell your story, send an e-mail to d.brunk@elsevier.com.

LAW & MEDICINE

Gross Negligence

BY S.Y. TAN, M.D., J.D.

Question: A patient developed postoperative paralytic ileus with intractable vomiting. The attending doctor inserted a nasogastric tube and administered intravenous fluids in the form of 5% dextrose in water. The patient died 6 days later from hypovolemic shock and cardiac arrhythmias. Serum electrolytes were not measured until the last day, when severe hyponatremia and hypokalemia became evident. A lawsuit for wrongful death alleged gross negligence and sought punitive damages, but no expert witness was called to testify. Which of the following best describes the situation?

A. This is a clear case of gross negligence, a standard of care so low as to shock the conscience.

B. The plaintiff will win; expert testimony is unnecessary because a reasonable layperson would conclude that there was substandard care.

C. Punitive damages are commonly awarded in medical malpractice cases, especially when negligence has caused death or severe neurologic injury.

D. Gross negligence is something more than ordinary negligence, but less than reckless or wanton misconduct.

E. Good Samaritan laws encourage aid to strangers by providing immunity for a defendant who would otherwise be liable for ordinary or gross negligence.

Answer: D. This hypothetical scenario introduces the notion of gross negligence as being different from ordinary negligence, and the legal implications of that distinction. The vast majority of medical malpractice cases allege ordinary rather than gross negligence. While it is agreed that gross negligence denotes something more "substandard" than ordinary negligence, there is no precise legal definition. In some jurisdictions, such as Connecticut, gross negligence may constitute an exception to the need for expert testimony, which is otherwise a requirement to establish medical negligence. In the above scenario, the jury may be allowed to determine liability without expert testimony only if the doctor's misconduct was so obvious as to constitute gross negligence—by no means a foregone conclusion.

Compensatory damages are the norm for medical plaintiffs who prevail. Punitive damages may occasionally be awarded when gross negligence is proved, but courts in several states have discouraged such awards, absent a malicious intent, so choice C is incorrect. Choice E is also incorrect. To encourage aid to strangers, "Good Samaritan" statutes immunize aid-givers from liability should ordinary negligence result in harm, but such immunity is typically forfeited if there is a finding of gross negligence.

In the medical context, the operational definition of negligence is best referenced in Prosser's Textbook on Torts: "The formula under which this usually is put to the jury is that the doctor must have and use the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing." Gross negligence denotes a higher degree of culpability than ordinary negligence, signifying "more than ordinary inadvertence or inattention, but less perhaps than conscious indifference to the consequences." The California Supreme Court approved the definition of gross negligence as "the want of even scant care or an extreme departure from the ordinary standard of conduct" (*Van Meter v. Bent Construction Co.,* 297 P.2d 644, 1956). Likewise, the law in Texas stipulates: "Gross negligence means more than momentary thoughtlessness, inadvertence or error of judgment. It means an entire want of care as to establish that the act or omission was the result of actual, conscious indifference to the rights, safety and welfare of the person affected" (Texas Civil Practice & Remedies Code § 41.001[7]).

Gross negligence does not have to amount to willful, wanton, or malicious misconduct. It does not even have to reach the level of "reckless disregard." Thus, in the Restatement (First) of Torts, an authoritative source of law, the authors differentiate reckless disregard from gross negligence by stating that the former creates a degree of risk "so marked as to amount substantially to a difference (from gross negligence) in kind."

Court decisions on the issue of gross negligence, predicated on inconsistent standards, can cut both ways, some favoring the plaintiff and others the defendant. In *Jackson v. Taylor,* Dr. James Taylor prescribed birth control pills for plaintiff Lois Jackson, who subsequently developed bleeding liver tumors allegedly caused by the birth control pills. The plaintiff's expert testified that Dr. Taylor's acts and omissions demonstrated his conscious indifference to the welfare of his patient (*Jackson v. Taylor,* 912 F.2d 795, 1990). In another case, the Oklahoma Supreme Court ruled that a 6½-inch clamp left in a surgical incision "might be construed to support a willful, wanton conduct amounting to gross negligence" (*Fox v. Oklahoma Memorial Hospital,* 774 P.2d 459, 1989).

A recent decision favoring the defendant involved a penicillin-allergic patient who died from massive hemolysis after receiving ceftriaxone (Rocephin). Relying on the gross negligence exception, the plaintiff failed to call an expert witness and lost the case. The Connecticut Supreme Court decided that "the defendant's conduct in administering Rocephin to the decedent and subsequently refusing to treat or to readmit the decedent does not meet the high threshold of egregiousness necessary to fall within the gross negligence exception" (*Boone v. William W. Backus Hospital,* 864 A.2d 1, 2005). ■

DR. TAN *is professor of medicine and former adjunct professor of law at the University of Hawaii, Honolulu. This article is meant to be educational and does not constitute medical, ethical, or legal advice. It is adapted from the author's book, "Medical Malpractice: Understanding the Law, Managing the Risk" (2006). For additional information, readers may contact the author at siang@hawaii.edu.*