

1998

## **The Effects of Remorse in a Malpractice Case**

Lahna M. Rung

Follow this and additional works at: [https://digitalcommons.lsu.edu/honors\\_etd](https://digitalcommons.lsu.edu/honors_etd)



Part of the [Law Commons](#)

---

Running Head: THE EFFECTS OF REMORSE IN A MALPRACTICE CASE

The Effects of Remorse in a Malpractice Case

Lahna M. Rung

Louisiana State University

## Abstract

The purpose of this study was to observe the effects of remorse on monetary damages awarded to a plaintiff in a malpractice case. The physician, after being found liable for malpractice, either expressed no remorse, remorse, or remorse with responsibility. Participants then decided how much money should be awarded to the plaintiff. It was predicted that remorse would positively affect the monetary damages in favor of the defendant. The participants' overall perceptions of both the plaintiff and the defendant were assessed. Less compensation was awarded when the physician expressed remorse, without admitting wrongdoing than when the physician indicated no remorse or expressed remorse and admitted wrongdoing. There were no significant differences regarding the participants' perceptions of either party.

### The Effects of Remorse in a Malpractice Case

Malpractice suits against physicians are common in American society today. Physicians are indeed responsible for the lives of their patients. However, as human beings they are apt to make mistakes. When mistakes are made in social situations, the appropriate response is to apologize. Does this social strategy apply to physicians as well or must they protect themselves from the courtroom?

The answer to this question has been up for debate (Fiesta, 1994; Lowes, 1997). Some sources say that apologies are appropriate when mistakes are made (e.g., Lowes, 1997). Apologizing is the natural and humane thing to do. However, most agree that physicians should never admit fault (Lowes, 1997). This admission may actually give the patient the idea to sue. Still, physicians that do apologize may avoid suit altogether because of their honesty. This may be because many patients or families of patients only sue to find out the events surrounding the mistake. For example, in a malpractice case, a father sued the hospital at which his newborn daughter had died (Lowes, 1997). The infant had received the wrong kind of formula, but this was unknown to the father. The suit was filed to find out the facts. After he did find out the truth and after the hospital made changes to prevent a recurrence of this type of mistake, the father dropped the suit.

Another important factor is a good doctor-patient relationship. The doctor must listen to all the patients' complaints because haste may lead to the doctor's failure of obtaining important information. If doctors give their patients respect, the patients will most likely return that respect. This alone may keep doctors

from the courtroom when they are honest about a mistake (Fiesta, 1994; Lowes, 1997).

Research has been done focusing on the value of an apology and expressions of remorse in non-legal social situations. When a mistake is made, as children we are taught to apologize. This is reinforced throughout our lives. Apologies are the favored outcome in social predicaments. Remorse is shown more when the consequences of one's actions increase (Schlenker & Darby, 1984). Apologies also partially lower a violation's impact on perceptions of trustworthiness, character, interpersonal judgment, and the likelihood of future transgressions (Orleans & Gurtman, 1984), although the effects of remorse are determined to some extent by the personality of the perceiver (Harrell, 1980).

Some research has looked at the perception of children in social predicaments. A good and remorseful child is blamed less and recommended for less punishment. The child is favored the most after apologizing and when he/she is perceived as good and remorseful (Darby & Schlenker, 1989). When children express remorse, ratings on such things as aggression, intent, hostility, and purpose seem to be relatively neutral (Schwartz, Kane, Joseph, & Tedeschi, 1978).

The effects of remorse on jury verdicts have been evaluated in legal cases. However, this research has been limited to criminal cases. Defendants who show remorse admit to wrongdoing. They show signs of humanity for the crimes that they have committed. Defendants who express remorse have been found to receive a significantly lower prison sentence than those who do not indicate remorse (Rumsey, 1976). Rumsey (1976) gave participants, both male

and female, a summarized trial transcript in which an intoxicated driver hit and killed a pedestrian after being told to take a cab by a policeman. In the remorse condition, the defendant was described as “extremely remorseful”. In the no remorse condition the defendant was described as “gave no indication of remorse”. The results indicated significantly lower prison sentences in the remorse condition. These results may be consistent, on a psychological basis, with the equity principle, which states that physical suffering on the part of the defendant leads to greater leniency. Because the expression of remorse may be seen as psychological suffering, remorseful defendants may therefore receive lower prison sentences (Rumsey, 1976).

However, more criminal research has indicated that remorse does not significantly affect jury decision making. The reason for this non-significant effect may be related to the nature of the crimes. Kleinke, Wallis, and Stalder (1992) conducted two studies in which remorse was manipulated. An interview with a convicted rapist was observed by both males and females. The rapist showed remorse by saying, “I feel bad about it. I’m sorry for the woman and I wish it had never happened”. He showed no remorse by saying, “I don’t feel one way or another about it. I just did what I had to do”. In the second study, a control group was added in which the rapist simply did not mention anything about remorse. When remorse was expressed, the rapist was perceived as having a less negative character, more potential for rehabilitation, and was assigned fewer years in prison; but these effects were not significant. This may be due to the fact that rape is an extremely controversial crime. Compared to men, women in

the study gave more severe ratings on cause, responsibility, blame, punishment, and adjective ratings of the rapist (Kleinke, et al., 1992).

Crosby, Britner, Jodl, and Portwood (1995) also found that remorse was not a predictor of jury verdicts, even when the defendant's age was manipulated. Crosby et al. (1995) gave questionnaires about a defendant found guilty of first degree murder to former petit jurors. The ages of 10, 15, 16, and 19 were used and the defendant either indicated remorse or no remorse. A parole officer told jurors at the sentencing that the defendant either showed signs of remorse or showed a complete lack of remorse. A majority of participants voted for execution regardless of age. The 10 and 15 year old defendants did receive lower percentages of execution votes, but this difference was not statistically significant. In addition, remorse did not predict jury verdicts regardless of age.

While remorse may not affect sanctions in some studies, it does affect trait ratings of defendants (Taylor & Kleinke, 1992). Taylor and Kleinke (1992) observed the effects of remorse in a case scenario in which an intoxicated driver ran a stoplight and hit another car. Remorse was described as the driver feeling terrible and guilty, while no remorse was described as the driver feeling nothing and that the accident just happened. Defendants who were remorseful were rated positively on personal traits. However, the only variable that influenced sanctions was severity, the amount of harm done to the victim.

These contradictory effects of remorse on jury decision making may be explained by examining the type of crime that is committed. When dealing with certain crimes, remorse may not matter because of the nature of the crime. Crimes such as murder or rape may be too controversial or harsh for remorse

even to matter. These contradictory effects may also be explained by Robinson, Smith-Lovin, and Tsoudis (1994). The results of this study showed that emotions, such as remorse, influenced sentencing, but only when they changed the complete perception about the perpetrator's identity. The complete identity must undergo change for significant effects to occur. Merely showing emotion may not be enough to alter the decisions of the jury.

The present study looked at the effects of remorse in a civil case, specifically, a malpractice case. It was presented to the participants as a case scenario in which a physician is found liable for negligence when he sends a man, who is complaining of chest pains, home (Jacobs, 1978). The man returns to the emergency room in cardiac arrest and later dies. The man's wife sues the physician for malpractice and the participants indicated the amount of money that would be awarded to her, since the physician is already held liable. The level of the physician's remorse was manipulated. He expressed no remorse, remorse, or remorse with responsibility. Because of the related research done in criminal cases, it was expected that the presence of remorse would positively affect the monetary damages in favor of the defendant. However, the size of this effect might only be moderate because in some of the previous research, remorse had not affected sanctions significantly. It was also predicted that in the remorse-responsibility condition, monetary damages would be higher because of the fact that the physician is admitting fault and may be perceived as less adequate. The overall perception of the defendant was also measured to see if remorse affected trait ratings.



## Method

### Participants

Undergraduate psychology students at Louisiana State University served as participants in this study. They voluntarily signed up for the study in return for extra credit points counting toward psychology classes. One hundred eleven students were tested with thirty-seven per cell. Gender differences were not explored because of the lack of male participants. There were eighteen males and ninety-three females that participated in this experiment.

### Materials and Design

Participants received one of three possible case scenarios in which a physician was found liable for malpractice (Jacobs, 1978; see Appendix A). The participants read about a doctor who misreads an electrocardiogram and sends his patient home. The patient later returns in cardiac arrest and dies. His wife sues and is seeking compensation for the loss of her husband. In the scenario, summaries from the testimony of both the plaintiff and the defendant explain the occurrences. A summary of an expert's testimony indicating liability on the part of the defendant is also included in the scenario. During the phase in which the damages are to be awarded, the physician's level of remorse, the independent variable, was manipulated. In the no remorse condition, the physician did not say anything indicating remorse. In the remorse condition, he expressed his sorrow "for the unfortunate death" of the plaintiff's husband without admitting wrongdoing. In the remorse-responsibility condition, the physician "expressed extreme remorse for his obvious negligence and for the unfortunate result in

which Xavier [the patient] died. He promised to be more cautious in the future in similar situations.”

### Procedure

Participants were told to assume the defendant was found liable and answer how much money, in dollars, should be awarded to the patient's wife for her loss. The participant's overall perception of both the plaintiff and the defendant were assessed using a nine point Likert scale, ranging from 1 to 9 (highly negative ratings to highly positive ratings, respectively). Perceptions of the defendant included: overall perception, degree of suffering, honesty, and competence. Perception of the plaintiff included only the overall perception and degree of suffering (see Appendix B).

Participants took part in the experiment in small groups. They read one of the three malpractice case scenarios and indicated the amount of money the patient's wife should receive as compensation for the loss of her husband. Participants were randomly given one of the three malpractice case scenarios and indicated the monetary awards. The participants' overall perception of the litigants was also examined. Participants were also asked if they were ever involved in a malpractice claim (three had been) or if their families and friends were physicians (forty-seven answered “yes”). As the result was the same for those who had family and friends who were physicians and those who did not, the data were combined for analysis.

## Results

One way ANOVA's (analysis of variance) on the remorse condition (no remorse, remorse, remorse-responsibility) were run unless otherwise specified. Means for all measures except compensation are shown in Table 1.

### Manipulation check

Each of the 111 participants rated the defendant's level of remorse using a nine-point Likert scale. This was to ensure that the remorse manipulation was adequate. The results were significant,  $F(2,108) = 29.27$ ,  $p < 0.001$ , indicating that the remorse manipulation was effective. Tukey's post hoc analysis was also run to see which of the three conditions were significantly different from the others. The no remorse condition was significantly different from both the remorse and remorse-responsibility conditions ( $p < 0.001$ ). However, the remorse and remorse-responsibility conditions were not significantly different ( $p > 0.5$ ). The means of the no remorse, remorse, and remorse-responsibility conditions were: 2.62, 5.24, and 5.70, respectively with standard deviations of 1.82, 2.05, and 1.73, respectively. The participants could tell whether or not the defendant showed remorse but did not differentiate between the two degrees of remorse.

### Compensation

Nine participants failed to give compensation awards, leaving 102 for this analysis. Three participants gave an estimate in which the average was taken as their answer; for example, a response of "1-2 million dollars" was coded as \$1.5 million. The overall mean with the three conditions combined was \$1,959,136 ( $SD = 5,325,630$ ).

There was a wide range of dollar amounts for the compensation variable (\$10,000 - \$47,000,000). Because of this, when analyzing the data, the numbers were transformed using the natural log. A one way ANOVA resulted in marginally significant results,  $F(2, 99) = 2.90, p = 0.06$ . The means for the no remorse, remorse, and remorse-responsibility conditions were: \$2,475,405 ( $SD = 7,620,987$ ), \$971,351 ( $SD = 1,776,937$ ), and \$2,443,750 ( $SD = 4,877,197$ ), respectively (see Figure 1).

### Perceptions

Plaintiff. Two variables assessed the participants' perception of the plaintiff: the overall perception and the degree of suffering (see Table 1). Neither was found to vary significantly as a function of the remorse condition;  $F(2, 108) = 0.87, p = 0.42$  for overall perception and  $F(2, 108) = 1.66, p = 0.10$  for suffering.

Defendant. Other than the remorse variable, four other variables assessed perception of the defendant using ANOVA measures: the overall perception, degree of suffering, honesty, and competence (see Table 1). Remorse did not have a significant effect on any of these four variables,  $F$ 's (2, 108) < 2.37,  $p$ 's > 0.10.

### Discussion

As was predicted, remorse did positively affect jury decision making in favor of the defendant at a marginal level. When the defendant expressed remorse, the plaintiff was awarded less money for compensation. However, if the defendant expressed a combination of remorse and responsibility, the plaintiff received approximately the same amount of money as when the defendant did not show any remorse at all.

These findings seem congruent with the literature that states that a child is favored the most after apologizing and when he/she is perceived as good and remorseful (Darby & Schlenker, 1989). An apology does seem to be the appropriate response when mistakes are made, even as adults. This study also seems to follow the data found in criminal cases in which defendants are perceived better when they are remorseful. In criminal cases, defendants who express remorse have been found to receive a significantly lower prison sentence than those who do not indicate remorse (Rumsey, 1976). This phenomenon may also apply to civil cases to some extent. In this experiment, the plaintiff was awarded less money when the defendant was remorseful. This finding was marginally significant which indicates that remorse does matter. The expression of remorse by itself is not taken as an admission of wrongdoing. When the defendant showed remorse along with admitting wrongdoing, the plaintiff received close to the same amount as when the defendant did not express remorse at all.

Other research has indicated that remorse does not significantly affect jury decision making. However, this research focuses on criminal cases. There has been no previous research on civil cases. In these criminal cases, the reason for this non-significant effect may be related to the nature of the crimes. Previous researchers have used such crimes as rape (Kleinke, Wallis, & Stalder, 1992) and first-degree murder (Crosby, Britner, Jodl, & Portwood, 1995). In other previous literature, remorse did affect trait ratings of defendants (Taylor & Kleinke, 1992); this experiment did not find this to be the case in a civil suit.

Remorse did not affect the perceptions of either the plaintiff or the defendant in this study.

This study may be limited by the fact that there were only eighteen male participants while there were ninety-three females. Gender differences may have appeared if there were an equal number of male and female participants due to the fact that the plaintiff was a woman with children. Female participants may tend to be more compassionate because of the relation.

Another limitation may be the experimental sample. All participants were students at Louisiana State University, which is a limited population. They are a younger and more educated sample than the general population of those able to serve as jurors. Although mock juries have not been found to differ significantly from the general population, there has been little research on the study of external validity (Bornstein, 1999).

A third limitation may be that participants were not given a specific amount of money to consider when awarding the plaintiff compensation. This may have led to the wide range of monetary values that was obtained. The lower limit was ten thousand dollars while the upper limit was forty-seven million dollars. In an actual civil suit the jurors would decide on the monetary award together, which would probably rule out such extremes. If the plaintiff were to ask for a specific amount of money, the range of monetary awards may tend to be limited.

There are a few suggestions to be made pertaining to future similar experiments. The severity of the defendant's actions could be manipulated. Research has shown that victims who are more severely hurt fare better

pertaining to damages (Bornstein, 1998). This may indicate that if the victim is permanently debilitated, he/she may receive greater awards than someone who fully recovers. The effect of remorse may decrease when the severity of the injury to the victim increases. Another suggestion would be to manipulate the time at which the defendant expresses remorse. If the physician apologizes immediately after death is he perceived more favorably than when apologizing in court?

In closing, if we accept the findings from this study, physicians should be advised to apologize for their mistakes. However, they should not accept responsibility for them because that is an admission of wrongdoing and leads to high damage awards.

## References

Bornstein, B. H. (1999). The ecological validity of jury simulations: Is the jury still out? Law and Human Behavior, 23, 75-91.

Bornstein, B. H. (1998). From compassion to compensation: The effect of injury severity on mock jurors' liability judgments. Journal of Applied Social Psychology, 28, 1477-1502.

Crosby, C. A., Britner, P. A., Jodl, K. M. & Portwood, S. G. (1995). The juvenile death penalty and the eighth amendment. Law and Human Behavior, 19, 245-261.

Darby, B. W. & Schlenker, B. R. (1989). Children's reaction to transgressions: Effects of the actor's apology, reputation, and remorse. British Journal of Social Psychology, 28, 353-364.

Fiesta, J. (1994). Communication-the value of an apology. Nursing Management, 25, 14-16.

Harrell, W. A. (1980). Retaliatory aggression by high and low machiavellians against remorseful and non-remorseful wrongdoers. Social Behavior and Personality, 8, 217-220.

Jacobs, H. B. (1978). The spectre of malpractice. New York: Nationwide Press, Ltd.

Kleinke, C. L., Wallis, R. & Stalder, K. (1992). Evaluation of a rapist as a function of expressed intent and remorse. Journal of Social Psychology, 132, 525-537.

Lowes, R. L. (1997, May 12). Made a bonehead mistake? Apologize. Medical Economics, 94-109.



Orleans, J. F. & Gurtman, M. B. (1984). Effects of physical attractiveness and remorse on evaluations of transgressors. Academic Psychology Bulletin, 6, 49-56.

Robinson, D. T., Smith-Lovin, L. & Tsoudis, O. (1994). Heinous crime or unfortunate accident? The effects of remorse on responses to mock criminal confessions. Social Forces, 73, 175-190.

Rumsey, M. G. (1976). Effects of defendant background and remorse on sentencing judgment. Journal of Applied Social Psychology, 6, 64-68.

Schlenker, B. R. & Darby, B. W. (1981). The use of apologies in social predicaments. Social Psychology Quarterly, 44, 271-278.

Schwartz, G. S., Kane, T. R., Joseph, J. M. & Tedeschi, J. T. (1978). The effects of post transgression remorse on perceived aggression, attributions of intent, and level of punishment. British Journal of Social & Clinical Psychology, 17, 293-297.

Taylor, C. & Kleinke, C. L. (1992). Effects of severity of accident, history of drunk driving, intent, and remorse on judgments of a drunk driver. Journal of Applied Social Psychology, 22, 1641-1655.

## Appendix A: Malpractice Case Scenario

THE FOLLOWING SUMMARY IS A CASE SCENARIO IN WHICH A PHYSICIAN HAS BEEN FOUND NEGLIGENT FOR MALPRACTICE. HE WAS THE PHYSICIAN ON DUTY WHEN A MAN CAME IN COMPLAINING OF CHEST PAINS. THE PATIENT SUBSEQUENTLY DIED OF A HEART ATTACK. THE PATIENT'S WIFE SUED THE PHYSICIAN. SUMMARIES OF BOTH SIDES ARE GIVEN ALONG WITH EXPERT TESTIMONY. READ THE FOLLOWING CASE SCENARIO AND ANSWER THE QUESTIONS THAT FOLLOW.

Xavier, a 42-year-old man, was taken to a hospital emergency room in 1995 by his wife, Linda, because he was complaining of severe chest pains. The pain was located underneath his breastbone and radiated to both shoulders. In the emergency room, Xavier had an electrocardiogram, which shows the electric waves that cause the heart to beat.

Dr. Treadway, the emergency room physician, sent Xavier home, advising him to take an antacid. When Xavier arrived home he felt worse than he had felt in the emergency room. He was dizzy and started vomiting, and when he collapsed on the floor, his wife called the police and an ambulance returned him to the same emergency room he'd recently left.

When Xavier arrived in the emergency room he was in cardiac arrest—no heartbeat. Another emergency room physician, Dr. Jones, managed to resume Xavier's heartbeat, though the patient's blood pressure was extremely low. He was admitted to the hospital's intensive care unit.

When Xavier arrived in the intensive care unit, his heart had again stopped beating. Repeat resuscitation was unsuccessful. Xavier died.

Dr. Treadway and Dr. Jones met with Linda and discussed the events surrounding the death of Xavier. Nothing was mentioned about possible negligence. However, when discussing these events with her family and friends,

it was suggested that Linda file suit against Dr. Treadway for malpractice. With this advice, Linda sued Dr. Treadway for malpractice and claimed loss of consort and pain and suffering for the loss of her husband. Her main case was based on the classic symptoms of a heart attack, which Xavier was complaining about and the abnormal electrocardiogram reading.

An expert for the plaintiff (Linda) testified that the diagnosis of myocardial infarction is based upon the triad of clinical presentation, blood tests, and ECG findings. Xavier's symptoms were typical of a heart attack or at least decreased blood flow to the heart. His electrocardiogram had findings classically seen in patients having a heart attack. Those two findings are enough to warrant admission to the hospital, aspirin therapy, continuous heart monitoring, and further blood work at a minimum. If this had been done, an irregular heart beat leading to cardiac arrest could have been detected and life saving measures instituted early.

Dr. Treadway denied any indication of negligence and contested the suit in court. He explained that the electrocardiogram was only slightly off of normal and that with no previous history of heart problems, he made the best judgment possible and sent Xavier home with an antacid. The symptoms Xavier had complained about may have also been caused by acid reflux. However, even though Dr. Treadway denied fault, he was held negligent for the events surrounding Xavier's death.

In the damages phase of the malpractice suit, in which Linda will be awarded a monetary sum to compensate for the loss of her husband, Dr. Treadway spoke on his behalf.

- 1) Dr. Treadway gave no indication of remorse for his actions.
- 2) Dr. Treadway expressed remorse for the unfortunate death of Xavier.
- 3) Dr. Treadway expressed extreme remorse for his obvious negligence and for the unfortunate result in which Xavier died. He promised to be more cautious in the future in similar situations.

Since Dr. Treadway has already been found liable for malpractice, it is your duty to decide how much money, in dollars, Xavier's wife, Linda, will be awarded for the damages she has endured. She is requesting compensation for loss of consort and pain and suffering. Xavier and Linda had been married for twenty years. They had four children together. The oldest is now sixteen and the youngest is seven. Linda has a small job that enables her to spend most of her time with her children. She drives the school bus on which they ride. With the death of Xavier, Linda and her children not only lost a husband and father, but also their main source of income.

## Appendix B: Answer Sheet

1. Gender? M, or F
2. How much money should Linda receive for loss of consort and pain and suffering? \_\_\_\_\_

Indicate why this amount of money was chosen. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.

3. Indicate your overall perception of Linda, the plaintiff, by circling a number from 1 to 9:

1	2	3	4	5	6	7	8	9
extremely negative				neither				extremely positive

4. Indicate your overall perception of Dr. Treadway, the defendant, by circling a number from 1 to 9:

1	2	3	4	5	6	7	8	9
extremely negative				neither				extremely positive

5. Indicate the amount of suffering Linda, the plaintiff, has endured by circling a number from 1 to 9:

1	2	3	4	5	6	7	8	9
no suffering								extreme suffering

6. Indicate the amount of suffering Dr. Treadway, the defendant, has endured by circling a number from 1 to 9:

1 2 3 4 5 6 7 8 9  
 no extreme  
 suffering suffering

7. Indicate how honest you perceive Dr. Treadway, the defendant, to be by circling a number from 1 to 9:

1 2 3 4 5 6 7 8 9  
 extremely extremely  
 dishonest honest

8. Indicate how competent you perceive Dr. Treadway, the defendant, to be by circling a number from 1 to 9:

1 2 3 4 5 6 7 8 9  
 extremely extremely  
 incompetent competent

9. Indicate how remorseful you perceive Dr. Treadway, the defendant, to be by circling a number from 1 to 9:

1 2 3 4 5 6 7 8 9  
 no indication extremely  
 of remorse remorseful

10. Have you ever been involved in a malpractice claim? (circle one) Y or N  
 If yes, please describe. \_\_\_\_\_

\_\_\_\_\_

11. Do you plan to attend medical school to become a physician? (circle one)  
 Y or N

12. Do you have family or friends who are physicians? (circle one) Y or N  
 If yes, who? \_\_\_\_\_

**Table 1:** Means of the Trait Ratings for both the Plaintiff and the Defendant for each of the conditions (no remorse, remorse, and remorse-responsibility) using a nine point Likert scale.

	No Remorse	Remorse	Remorse-Responsibility
Remorse of Defendant	<b>2.62</b>	<b>5.24</b>	<b>5.70</b>
Perception of Plaintiff	<b>6.03</b>	<b>6.24</b>	<b>5.78</b>
Perception of Defendant	<b>3.84</b>	<b>4.65</b>	<b>4.49</b>
Suffering of Plaintiff	<b>8.49</b>	<b>8.30</b>	<b>8.00</b>
Suffering of Defendant	<b>4.22</b>	<b>5.03</b>	<b>5.30</b>
Honesty of Defendant	<b>5.14</b>	<b>5.19</b>	<b>5.46</b>
Competence of Defendant	<b>4.51</b>	<b>4.78</b>	<b>4.62</b>

Ratings were made on a 1 (low) to 9 (high) Likert scale.

# Figure 1: Mean Compensation

