

HOW TO DEAL MEDICAL NEGLIGENCE IN CLINICAL PRACTICE

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MEDICAL QUIZ

Which of the following is not the right of patient

- 1. To choose doctor of his own choice in govt hospital
- 2. Dump doctor at any stage
- 3. Informed consent
- 4. Right of information



QUIZ 2

Doctor should make MLC in all cases except

- 1. Self accident but patient is conscious
- 2. Sexual assault
- 3. self inflicted injuries
- 4. unconscious patient



DOCTOR-PATIENT RELATIONSHIP

- Rights of patients
- Rights of doctor



RIGHTS OF PATIENT

- Right to choose doctor of his choice
- Right to information
- Right to privacy
- Right to confidentiality
- Right to Pictures/video recording
- Right to change doctor at any stage
- Right to grievance redressal

- **Samira Kohli vs Dr. Prabha Manchanda & Anr on 16 January, 2008**
- (A doctor has to seek and secure the consent of the patient before commencing a 'treatment' (the term 'treatment' includes surgery also). The consent so obtained should be real and valid, which means that : the patient should have the capacity and competence to consent; his consent should be voluntary; and his consent should be on the basis of adequate information concerning the nature of the treatment procedure, so that he knows what is consenting to.



DUTIES OF PATIENT

- Correct information about disease
- Faith in doctor and treatment
- Follow advice sincerely
- Pay the fee



RIGHTS OF DOCTOR

- Right to choose patient of his choice
- Role in emergency/ mass disaster
- Right to charge professional fee
- Right of termination of advice



DUTIES OF DOCTOR

- To apply reasonable skill
- To provide reasonable care
- Should not accept more patients than he can handle
- Charge reasonable



MEDICAL NEGLIGENCE

- Doctor owed a duty of care
- There was a breach of duty
- Patient suffered a damage



MUST EXERCISE

- Duty to exercise reasonable degree of skill and care
- Reasonable skill
- Reasonable care

- Bolam Test
- Bolitho Test



DAMAGE SUFFERED BY PATIENT

- Loss of earnings
- Expenses
- Reduction in expectation of life
- Reduced pleasures of life due to disability
- Physical or mental suffering
- Death



CAUSES OF NEGLIGENCE

- Acts of omission
- Act of commission



ACTS OF OMISSION

- Failure to provide proper care like post-operative care, suction, monitor fetal heart rate
- Failure to resuscitate in time



ACTS OF COMMISSION

- Doctrine of *res ipsa loquitor*
- Presence of operating instruments
- Operation on wrong limb or eye
- Fatal doses of drugs given
- Doctor was in total control of situation
- Patient has not contributed



CONTRIBUTORY NEGLIGENCE

- Patient does not give proper history
- Hide drug reactions
- Failure to take medicine properly
- Early movements in fractures
- Wrong medications in doses/ taking other drugs too
- Burden of proof



JACOB MATHEW CASE

- on 15.2.1995, late Jiwan Lal Sharma was admitted as a patient in a private ward of CMC Hospital, Ludhiana. On 22.2.1995 at about 11 p.m., Jiwan Lal felt difficulty in breathing. The complainant's elder brother, Vijay Sharma who was present in the room contacted the duty nurse, who in her turn called some doctor to attend to the patient. No doctor turned up for about 20 to 25 minutes. Then, Dr. Jacob Mathew, and Dr. Allen Joseph came to the room of the patient. An oxygen cylinder was brought and connected to the mouth of the patient but the breathing problem increased further. The patient tried to get up but the medical staff asked him to remain in the bed. The oxygen cylinder was found to be empty. There was no other gas cylinder available in the room. Vijay Sharma went to the adjoining room and brought a gas cylinder therefrom. However, there was no arrangement to make the gas cylinder functional and in-between, 5 to 7 minutes were wasted. By this time, another doctor came who declared that the patient was dead.



- On the abovesaid report, an offence under Section 304A/34 IPC was registered and investigated. Challan was filed against the two doctors.
- The Judicial Magistrate First Class, Ludhiana framed charges under Section 304A, IPC against the two accused persons, both doctors. Both of them filed a revision in the Court of Sessions Judge submitting that there was no ground for framing charges against them. The revision was dismissed. The appellant filed a petition in the High Court under Section 482 of the Code of Criminal Procedure praying for quashing of the FIR and all the subsequent proceedings.



- Vide order dated 18.12.2002, the High Court dismissed the petition
- Moved to Supreme court.



- According to the appellant, the deceased Jiwan Lal was suffering from cancer in an advanced stage and as per the information available, he was, in fact, not being admitted by any hospital in the country because his being a case of cancer at terminal stage. He was only required to be kept at home and given proper nursing, food, care and solace coupled with prayers. But as is apparent from the records, his sons are very influential persons occupying important positions in Government. They requested the hospital authorities that come what may, even on compassionate grounds their father may be admitted in the hospital for regulated medical treatment and proper management of diet. It was abundantly made clear to the informant and his other relations who had accompanied the deceased that the disease was of such a nature and had attained such gravity, that peace and solace could only be got at home. But the complainant could prevail over the doctors and hospital management and got the deceased admitted as an in-patient.



JACOB MATHEW CASE

- The Supreme Court stated in Dr Jacob Mathew's case that in order to make a doctor criminally responsible for the death of a patient, it must be established that there was negligence or incompetence on the doctor's part which went beyond a mere question of compensation on the basis of civil liability. Criminal liability would arise only if the doctor did something in disregard of the life and safety of the patient. Certain directions have also been given in the case.



- According to Section 304A of the Indian Penal Code, causing death by doing a rash and negligent act attracts imprisonment for up to two years, or a fine, or both. The burden to collect evidence of criminal liability is upon the complainant. The accused person will be presumed innocent until proof beyond reasonable doubt is adduced by the prosecution; a mere preponderance of probabilities would satisfy the civil court. For these reasons, an act that is seen as negligent in a civil court need not necessarily be culpable negligence in the criminal court.



- Since the medical profession renders a noble service, it must be shielded from frivolous or unjust prosecutions. With this perspective in mind the Court went into the question as to what is actionable negligence in the case of professionals. The law now laid down is as follows:
- 1. A simple lack of care, an error of judgment or an accident, even fatal, will not constitute culpable medical negligence. If the doctor had followed a practice acceptable to the medical profession at the relevant time, he or she cannot be held liable for negligence merely because a better alternative course or method of treatment was also available, or simply because a more skilled doctor would not have chosen to follow or resort to that practice.
- 2. Professionals may certainly be held liable for negligence if they were not possessed of the requisite skill which they claimed, or if they did not exercise, with reasonable competence, the skill which they did possess.
- 3. The word 'gross' has not been used in Section 304A of IPC. However, as far as professionals are concerned, it is to be read into it so as to insist on proof of gross negligence for a finding of guilty



- The maxim *Res ipsa loquitur* (Let the event speak for itself; no other evidence need be insisted) is only a rule of evidence. It might operate in the domain of civil law; but that by itself cannot be pressed into service for determining the liability for negligence within the domain of criminal law. It has only a limited application in trial on a charge of criminal negligence.
- 5. Statutory Rules or executive instructions incorporating definite guidelines governing the prosecution of doctors need to be framed and issued by the State and Central governments in consultation with the Medical Council of India (MCI). Until this is done, private complaints must be accompanied by the credible opinion of another competent doctor supporting the charge of rashness or negligence. In the case of police prosecutions, such an opinion should preferably from a doctor in government service.
- 6. Doctors accused of rashness or negligence may not be arrested simply because charges have been levelled against them; this may be done only if it is necessary for furthering the investigation, or for collecting evidence, or if the investigating officer fears that the accused will abscond.
The Supreme Court has not stated, even now, that doctors can never be prosecuted for medical negligence. It has only emphasised the need for care and caution in prosecuting doctors in the interests of society. A certain amount of immunity or extra insulation is now allowed to them considering the noble service rendered by their fraternity and in view of the reports that complainants often use criminal cases to pressurise medical professionals and to extract unjust compensation.



HOW TO DEAL WITH ISSUES

- Take informed consent
- Explain all details
- Talk, talk, talk to patients
- Handle notice carefully
- Fight court case professionally
- Take event as part of profession and life



MEDICO-LEGAL ISSUES IN PRACTICE OF PHYSICIANS- ACTS OF OMISSIONS

- Failure to attend call in time
- Failure to study symptoms, signs due to non interest due to indifference, busy schedule or poor financial status of patients
- Failure to diagnose due to non-will
- Failure to prescribe proper lab tests
- Failure to obtain informed consent
- Failure to tell how to take treatment and precautions
- Failure to tell to take precautions in infectious diseases.
- Failure to admit in time
- Abandoning the patient



ACTS OF COMMISSIONS

- Proper consent not taken
- Examination done in hurried manner
- Wounding patient in examination
- Improper diagnosis made
- Proper plan of treatment not executed
- Planning treatment beyond one's skill / expertise or lack of infrastructure
- Too lengthy treatment to get financial reward



IMPROPER RELATIONS WITH PATIENT

- Adultery
- Doctor took advantage when patient was not in proper frame of mind- attention psychiatrist
- Vaginal examination done too often and for long and sometimes when it was not needed at all
- Improper and long examination of breasts /back/buttocks



HIGH EXPECTATIONS OF PATIENTS

- Wrong assurances given by doctors
- Misleading advertisements of doctors/ clinic/hospitals



BIGGEST REASON OF LITIGATION

- Non communication
- No talk with spouse/ relatives
- False hopes given by doctors
- Too much expenditure by patient or relatives
- Internet literature
- Lawyers offering services on commission basis- ambulance chasers
- Non release of dead body due to non payment
- Doctors lack proper business sense due to greed
- Insurance companies do not pay for out of court settlement
- Doctors ignore notice by patient



MANTRA OF AVOIDING LITIGATION

- Talk , talk and again talk with relatives/ patient
- Do not be penny wise and pound foolish
- Try to accept business losses due to non –payment by patient
- Never underestimate potential litigation situation
- Remember , in litigation doctor loose either money or time or mental peace or sometimes all
- Take precautionary ways
- Document contributory negligence
- Records can save you.
- Hire medico-legal consultant who can save you from litigation
- Take all in way of life



NEW MCI GUIDELINES FOR GIFTS/ FACILITIES OFFERED BY PHARMA COMPANIES

- *6.8 Code of conduct for doctors and professional association of doctors in their*
- *relationship with pharmaceutical and allied health sector industry.*

- *6.8.1 In dealing with Pharmaceutical and allied health sector industry, a medical*
- *practitioner shall follow and adhere to the stipulations given below:-*
- *a) Gifts: A medical practitioner shall not receive any gift from any pharmaceutical*
- *or allied health care industry and their sales people or representatives.*
- *b) Travel facilities: A medical practitioner shall not accept any travel facility inside*
the country or outside, including rail, air, ship , cruise tickets, paid vacations etc.
from any pharmaceutical or allied healthcare industry or their representatives for self and family members for vacation or for attending conferences, seminars,
workshops, CME programme etc as a delegate.
- *c) Hospitality: A medical practitioner shall not accept individually any hospitality*
like hotel accommodation for self and family members under any pretext.



- **Gifts:** *A medical practitioner shall not receive any gift from any pharmaceutical or allied health care industry and their sales people or representatives.*
- **Gifts** *more than Rs. 1,000/- upto Rs. 5,000/- : Censure*
- **Gifts** *more than Rs. 5,000/- upto Rs. 10,000/-: Removal from Indian Medical Register or State Medical Register for 3 (three) months.*
- **Gifts** *more than Rs. 10,000/- to Rs. 50,000/- : Removal from Indian Medical Register or State Medical Register for 6(six) months.*
- **Gifts** *more than Rs. 50,000/- to Rs. 1,00,000/- : Removal from Indian Medical Register or State Medical Register for 1 (one) year.*



- **Gifts** more than Rs. 1,00,000/-: Removal for a period of more than 1 (one) year from Indian Medical Register or State Medical Register



- ***Travel facilities:*** *A medical practitioner shall not accept any travel facility inside the country or outside, including rail, road, air, ship, cruise tickets, paid vacations etc. from any pharmaceutical or allied healthcare industry or their representatives for self and family members for vacation or for attending conferences, seminars, workshops, CME programme etc. as a delegate.*



- ***Expenses for travel facilities more than Rs. 1,000/- upto Rs. 5,000/-: Censure***
- ***Expenses for travel facilities more than Rs. 5,000/- upto Rs. 10,000/-: Removal from Indian Medical Register or State Medical Register for 3 (three) months.***
- ***Expenses for travel facilities more than s.10,000/- to Rs. 50,000/-: Removal from Indian Medical Register or State medical Register for 6 (six) months.***
- ***Expenses for travel facilities more than more than Rs. 50,000/- to Rs. 1,00,000/-: Removal from Indian Medical Register or State Medical Register for 1 (one) year.***



- ***Expenses for travel facilities more than Rs. 1,00,000/-: Removal for a period of more than 1 (one) year from Indian Medical Register***



WHY RECORDS ARE NEEDED

- ▶ Records to be created by law
- ▶ Records to be created as per procedure and should be correct
- ▶ Records are a matter of right for patient
- ▶ Records alone have evidentiary value in eyes of law
- ▶ Records can save doctor in court of law.
- ▶ Any case may be made MLC anytime , so previous record may be asked by police



MCI GUIDELINES FOR RECORDS

► 1.3 Maintenance of medical records:

1.3.1 Every physician shall maintain the medical records pertaining to his / her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as **Appendix 3**.

1.3.2 If any request is made for medical records either by the patients / authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.

1.3.3 A Registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical certificate he / she shall always enter the identification marks of the patient and keep a copy of the certificate. He / She shall not omit to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.

1.3.4 Efforts shall be made to computerize medical records for quick retrieval



GUIDELINES FOR PRESCRIPTION WRITING

- ▶ Medical Council of India (MCI) has come up with a new standard format for the prescriptions to be written by doctors.
- ▶ According to this: Doctors need to mention the prescription in CAPITAL LETTERS.
- ▶ They need to mention generic names of the drugs.
- ▶ The new standard format will be legible all across the country.



DIGITAL RECORD KEEPING

- ▶ Convenient cloud storage
- ▶ Patient history is maintained: Better diagnosis and treatment
- ▶ No Redundancy: Duplication of data and mismatch due to similar names can be easily avoided
- ▶ Long Term Storage: Records can be kept for many more years than required guidelines
- ▶ Sharing Of Data: Records are present with both patient and healthcare facility



WHAT IS MEDYSKY ?

- ▶ India's first Integrated EHR and PHR solution
- ▶ Cloud based Innovative Concept
- ▶ Anytime, Anywhere Access



MEDYSKY: EASY TO USE

- ▶ No need to change from Traditional Pen & Paper Prescription writing.
- ▶ You focus on your practice, we take care of your record keeping.



MEDYSKY: EASY TO USE

HOW ??

- ▶ Your Assistant takes a picture of the Prescription and Patient Documents on any SmartPhone and sends on Medysky.
- ▶ We save all the documents properly for easy retrieval and also digitize the prescriptions.



MEDYSKY: SAFETY & PRIVACY

- ▶ USA Standard - HIPAA Compliant for safety & Privacy of health records
- ▶ High level of Security and Safety of data.
- ▶ OTP(One Time Password) Protocol for Patients' Consents
- ▶ Your Practice owns the data. No unauthorized access/editing of Data.

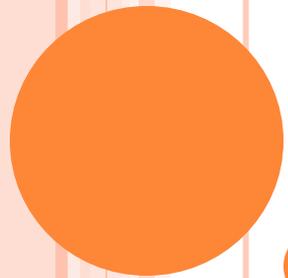


MEDYSKY: WHAT IS THE COST?

➤ **NIL**

▶ No Charge for Software from Doctors





THANKS