What is Medical Negligence and How to Avoid Medical Negligence

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ABSTRACT

Medical negligence is any harm caused due to negligent behaviour by any of the medical fraternity. Medical negligence can be either due to the doctor or the patient - doctors in hurry to treat many patients might miss some questions important for a diagnosis while patients may not reveal some important aspects regarding their health thinking those aspects may be less important. Therefore, a detailed history, thorough physical examination and getting investigations done when necessary may help in decreasing medical negligence. Few important points which all the doctors should keep in mind in day to day lives are given at the end.

Keywords: Medical Negligence, Doctors

SECTION-304A of the Indian penal code of 1860 states that “Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both”.  

SECTION-304A is general in nature and it also applies to other negligent acts like rash driving etc. Medical Negligence is “Any act or omission by a physician during treatment of a patient that deviates from accepted norms of practice in the medical community and causes Injury to the patient”. Medical negligence is a specific subset of tort law and criminal law that deals with professionals' negligence.

Determination of Medical Negligence

1. Doctor - patient relationship existed
2. The doctor was negligent
3. Doctor's negligence caused the injury
4. The injury has led to specific damages
5. Failure to Diagnose
6. Improper Treatment
7. Failure to warn patient of known risks
8. Treatment without informed consent may also amount to negligence.

Six Common Types of Medical Negligence

1. Misdiagnosis.
2. Delayed Diagnosis.
3. Failure to treat
4. Surgical Errors
5. Birth injury
6. Medical product liability

Courts endeavor to protect the medical professionals from harassment but do not get into misplaced sympathies. The courts do not substitute their own judgement with that of the medical professionals for instance adoption of procedure involving higher risk with the Bonofied expectations for better chances of success in preference to a procedure involving lesser risk, greater chances of failure even if it involves divergent views among doctors, would not lead to finding of negligence.

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Advisory to Doctors

Precautions which Doctors/Hospitals/Nursing homes should take:

- Current practices, infrastructure, paramedical and other staff, hygiene and sterility should be observed strictly.
- No prescription should ordinarily be given without actual examination. The tendency to give prescription over the telephone should be avoided.
- A doctor should not merely go by the version of the patient regarding his symptoms but should also make his own analysis including tests and investigations where necessary.
- A doctor should not experiment unless necessary and even then, he should ordinarily get a written consent from the patient.
- An expert consent should be taken in case of any doubt.

Keeping in view of the rise in criminal prosecution of doctor which is both embarrassing and harassing for them, and to protect them from frivolous and unjust prosecutions, supreme court laid certain binding guidelines till statutory rules or instructions by the government in consultation with MCI are issued which are as follows-

1. Private complaint may not be entertained unless the complaint has produced prima facie evidence in the court in the form of credible opinion given by another competent Doctor.
2. Investigation officer should obtain an independent and competent medical opinion preferably from a doctor in government service qualified in the branch of medical specialty who can normally by expected to give an impartial and unbiased opinion.
3. Doctor may not be arrested in a routine manner unless the arrest is necessary for furthering the investigation or for collecting the evidence or if the investigation officer is satisfied that Doctor may flee.

Important points

1. Every patient is a potential litigant (however sweet and charming you find the attenders in counselling session)
2. When a case goes to trial, if you haven’t written date and time of your visit then your notes are questionable.
3. Never hesitate to over investigate. Err on the side of caution.
4. Never hesitate to admit in ECU. Financial status of the patient is not your headache. If not affordable the Govt is providing world class infrastructure and care in all government hospitals.
5. Save at least 50 lakhs for potential consumer forum litigation. If not possible, then get a medical indemnity insurance (whether you are a resident, registrar or consultant)
7. There is no bargaining in health care. If you have made a clinical decision. Stick by it.
8. Make sure you document that the patient is deteriorating and likelihood of patient’s death in ICU. (Don’t hesitate to use the word ‘Death’)
9. Do not show sympathy. Be empathetic
10. Use caution while speaking in ICU. Some of the patients are awake and are listening to what u say.
11. Take consent for blood transfusion also.
12. Never advise treatment on phone. Whatsapp, skype, Instagram, sms. The supreme court’s ruling is the same.
13. If patient attenders call you asking what to do on a holiday and describe the patient’s condition, don’t rely on them. Ask them to bring the patient to the hospital. (The only reason patient’s son/daughter calls you on a holiday is to get a fade assurance that he can wait till tomorrow).
14. Don’t answer phone while driving. His fever of 98.9 is not more important than your life.
15. Take care of your health. You and only you are responsible for your health. The patient that you so laboriously resuscitated, revived, treated won’t thank you after 19 days of hospital admission.
16. Every stroke of your pen in the OP/IP sheet is medico legally answerable. Choose your words carefully.
17. If you really love your kids, inculcate the love of Maths and Physics in them.
18. The ethics taught to you are not applicable for Indian scenario.
19. Do not be happy that you have the attender’s signature on all the consent forms etc. It may not be his signature after all.
20. When you see an aggressive mob (anything more
than 3 persons) don’t try to engage them. Escape the scenario. You may be a pink belt in Muay-Thai, kick boxing or Krav Maga but you can't fight a mob. (It only happens in Bollywood, and you are not a Bollywood hero)

End Note

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References