

Voice of the Experts

Following answers are given, singly or in collaboration, by following medicolegal experts.....



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(1) It is often seen that a section 304 IPC is registered against doctors after the death of a patient due to any reason. Can patient's relatives bring this murder charge at any time? What should a doctor do in such cases?

Yes, it's a fact. And a disheartened relative will try to influence the police to put the harshest section. In this connection, the doctor should take help of colleagues, Medicolegal consultant and local IMA or such organisation and go to the higher police authorities with famous landmark judgment Jacob Mathews v State of Punjab (Supreme Court Aug. 2005) and Dr Martin D'Souza v Mohd. Isfaq (SC 2009) which clearly mandates not to apply 304 but 304A only; and that too in exceptional circumstances. The latter decision goes one step further, warning police that SC will take suo moto action if this principle is violated. By giving a copy of these judgments, at least 5 times, such application was avoided, 3 times in Pune, once in Chandigarh and once in Bhuj. We had supplied this advice from IMA Pune. In 1 case in 2017, 6 doctors arrested had to be freed immediately once this position was clearly brought to the notice of Pune Police Commissioner.

In some states, doctors feel it safer to insist on registering any criminal complaint against them or the Health care establishment in case of a death under CrPC 174(3)(iv) citing doubt regarding cause of death.

(2) Sometimes, there have been cases when a doctor has been accused of sexual molestation while examining a female patient. What precautions can a doctor take to avoid such incidents?

Precautions to be taken by a male doctor while examining a female patient :-

(a) Inform the female patient as to which private parts the male doctor will examine and why it is necessary. The patient should be convinced and expressly allow the examination.

(b) Examine any female patient in the presence of another female. May she be your staff (preferably), her relative or relative of another patient. If there is no other female present, don't examine the patient unless it is an emergency. In such cases, ensure that your staff and other males accompanying the patient are around.

(c) CCTV Camera is not allowed in the examination area. But, keep the adjacent area under surveillance of CCTV so that in case the patient behaves with an intention to falsely blame you, you can immediately move to the adjacent area under surveillance.

(4) If a female patient is below the age of 18 years, avoid examining. If because of unavailability of a female doctor and certain compelling circumstances e.g. required by law, a male doctor has to examine, please take consent of a female guardian of the child and follow above directions.

(3) Is there any Indian law regarding writing of death certificates? If a doctor sees a patient for the first time on his/her deathbed, should he write the certificate of death? What should a doctor do if the patient party and local goons force him to write a death certificate?

Yes, there is The Registration of Births and Deaths Act, 1969 which governs issuing 'Medical Certificate of Cause of Death'. Death certificate proper is issued by local authorities on the basis of the cause of death certificate issued by the doctor.

If a doctor sees a patient for the first time on his/her deathbed, he shall not write the certificate of death.

If the patient party and local goons force a doctor to write a death certificate, he shall politely counsel the related people as to why he can't issue the cause of death certificate, the legal bindings, etc. He should take help of the local IMA branch and medico legal experts while talking with these people. If still they force, he should inform the police.

(4) It is often seen that doctors are denied entry in their homes during this current pandemic. In some cases neighbours are forcing doctors to leave homes. What should a doctor do in such cases?

Take help of police with the GRs (Government Resolutions) from various State Governments that prohibit such illegal behaviour from Society secretary, chairman or public. By force of law only, such a problem can be solved.

The state and central govt has announced that any personal preventing or objecting or even troubling in terms for rent payment to the frontline worker be it healthcare or others would be penalized under the Epidemic act.

If, in case, any person faces such a problem he should be well aware of such law and first try to convince the local society people that such law exists and convince them. Even in spite of this there is an objection he/ she has to bring it to the notice of local authorities and take necessary action.

It might so happen that even the local authorities are unaware of such a law or provision to help the frontline workers in a pandemic, so in such a situation he/ she has to educate the local authorities also, or it can be brought out through local IMA.

Be friendly with society and also be well read about the law which will always protect you.

(5) Suppose a doctor finds that some imposter is using his registration number to give out fake prescriptions of dangerous drugs. What should the doctor do in such cases?

Always complain to the police with a copy to the commissioner of police of the region in writing and insist for acknowledgement. Send an email to the police commissioner also. Also mention in the application that I am not responsible for any consequences of the prescription as I disown the prescription totally. Attach Xerox copy of your registration. Send a copy of the same to the Medical council where you are registered.

(6) If a patient with an assault or street accident comes to a doctor in a private chamber and asks for a medical certificate of injury, can a doctor give such a legal document? Or should the patient be sent to a government hospital?

If the doctor (RMP) has treated the patient even as first aid or as emergency, he is legally authorised to give a certificate of injury. But doctors, many times, shirk away as he may be called by courts for testimony later on. (In short, to issue such an injury certificate is not 'cost effective') and therefore, the patient is asked to get treatment and certificate from a government facility.— This is practical.

All Private doctors are legally bound to treat an emergency patient and then if necessary refer them to higher center. Once they treat them they will be witnesses for the first hand information to the injuries.

These injuries should be documented and police intimation given. MLC registered.

Once this is done even if the case is referred to a higher center, the court or police will approach the primary treating doctor to give an injury certificate. While issuing this certificate one can demand the treatment received in the referred hospital to know the investigation done and treatment received before issuing a medical injury certificate.

(a) The doctor has to issue a medical injury certificate (in prescribed format) when demanded by the appropriate authority either police or court, not directly to the patient.

(b) Patient can just receive only a medical certificate to join back duty and so on and not the legal document.

(7) If a doctor sees a road traffic accident on the way and he cares for the victim, can he later be called to give evidence in court? Can a doctor be charged with negligence regarding treatment of such emergency cases ?

Yes, doctors can be called as a witness.

Also, if he gives treatment, he can be sued for negligence—however, as an expert medicolegal person, the doctor can definitely strongly argue that there was no established doctor patient relationship, as this DP relation was forced on him due to obiter dicta by Supreme Court (1989) in Parmanand Katara case. In fact there is such a case from the New Delhi State Consumer forum and the Pediatrician was penalised, but he should have gone in appeal on the above defense points.

Doctor when he cares for a accident victim on road is a general public with some expertise of medical knowledge without any material to treat except a first aid kit if he has. So as per The Supreme Court direction and approval of the Centre issued necessary guidelines with regard to the protection of Good Samaritans, no person who helps a victim of road traffic accident will be forced to reveal his identity nor will be forced by the police to come as a witness or evidence to court. Same applies to doctors also.

But if the doctor takes him to his hospital make a document on this patient and treats him in the hospital premises, then he will be called for evidence and also can be booked for any type of negligence.

Any act done in good faith and to help the patient live his life will be upheld in the court of law with proper documentation.

(8) If a patient party alleges that the degree of a doctor is false and complains in the police station, can the OC of the station demand to see the certificate of the doctor? Such incidents have happened.

Police have no authority to ask for the degree certificate to verify the document, as they have no expertise to check it. Instead the OC duty is to raise a query with concerned district health officer or the Medical council to verify them. If in case they demand the certificate for verification it is the duty of the doctor to produce the same.

Display all necessary documents like degree certificate, medical council registration certificate and all major licenses of the hospital or clinic in a visible place. In the present era of smartphones they can take a pic of it and get it verified. If we are truthful we need not worry. But can easily avoid harassment by the police.

(9) If a consumer court awards a compensation amount to a patient party, which is greater than the lifetime income of a doctor, what should a doctor do ? Is he/she bound to pay the compensation amount selling all his properties ?

Theoretically, yes, he will have to pay (jokingly, sell himself and pay!!).

If a consumer court awards a compensation amount to a complainant which is more than the total liquid money available with the doctor. The complainant can file a recovery suit to execute the court decree in the civil court of the jurisdiction where the doctor resides, practices or holds the property .

By going through Order 21 rule 30 of C.P.C, every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by detention in the Civil Prison of the judgment debtor or, by the attachment and sale of his property, or by both.

According to Order 21 rule 31(1) of C.P.C, when the decree is for any specific movable property, the execution can take place in any of the following made:

- By seizure and delivery of the property.
- By detention of the judgement debtor (here is the doctor)
- By attachment of his property.
- By attachment and detention both.

According to Order 21 rule 35 sub-rule-1 of C.P.C, A court executing a decree has the power to attach the property and sell the property or portion thereof which is sufficient to satisfy the decree. After such attachment the first step is issuing a proclamation of sale. Such a proclamation shall be prepared after notice to both the sides and shall comprise of following details: -

- Time and place of sale.
- Details of property or part thereof to be sold.
- Revenue if any attached to property.
- Encumbrance to which the property is liable.
- Amount to be recovered under the decree.
- Such other particulars which the court considers material.

Better to — 1. Defend well. 2. Appeal against disproportionately high compensations 3. Have huge indemnity insurance coverage 4. Join IMA PPS

(10) It is now seen that in India, courts often reward patient parties with hefty compensation amounts. What is the basis for calculation of such compensation claim ?

Previously, and even now, majorly it is on the basis of compensation described in motor vehicle accident cases. However, in the Kunal Saha vs Amri Hospital, Dr Sukumar Mukharjee case in 2013 (Supreme Court), courts have adopted different calculations—“Quantum of Damages” for pain + expected income in lifetime of the applicant with increments + loss of companionship + pain + actual expenses + mental suffering. —it came to 6.5 Cr + 5.5 Cr as interest @ 6%. Of course that case is in appeal (as we know the position as of today) in full bench of SC.

Again, the principles remain the same, see answer to Q.9 above.

(11) How long should a doctor preserve patient data for future possible medicolegal cases? In India, where doctors often operate independently without any institutional support, how should a doctor preserve such data ?

MCI says, preserve indoor paper for 5 years, we suggest, preserve for 7 years.

Courts usually follow the UK system, which says, 6 years—so 7 years is a good period.

OPD papers, 3 years (MCI does not specify)

All Medicolegal (accident, suicide, poisoning, OT death, police registered or criminal case, etc)—preserve for 30 years (or better, till doctor dies!!)

For children and Obstetric cases, till the baby becomes 21 years.

For MTP, Tubectomy, PCPNDT—2 years

For Mentally retarded patients forever till the person is practicing.

Whenever, you receive a notice, or court intimation, always preserve till our life time!

Period of limitation—

Consumer case—2 years

Civil court—3 years

Criminal case—No time limit

Human rights—no time limit

However, there is a lot of discretionary power to

the judiciary to condone delay and hence, let’s stick to the regimen mentioned above.

Hence, to be much safer **all cases papers should be preserved lifelong.**

Doctors can have paper records, authentic electronic records, microfilming etc.

(12) In cases like coronavirus pandemic, where there is threat to life, can a doctor be forced by the government or private sector to work in covid ward? Is there any way a doctor can legally avoid such dangerous duties ?

Yes, the government can force covid duties. Take help of govt./ICMR guidelines to say no for such duties, like age>55-60, diabetes, hypertension, nephropathy etc. Take help of Medicolegal expert. They can help legally to avoid such duties legitimately. Also check if the government is giving insurance cover, PPE, etc. as directed by the Supreme Court.

It is the government duty to protect the lives of the people following the orders by giving them adequate protection and reasonable remuneration.

(13) If a doctor gets beaten up by the patient party and there is long term illness due to assault, can the doctor claim compensation from the party? What are the mandatory evidence a doctor should preserve for such cases?

Doctor being a citizen of the country first and then a doctor, any assault by anyone he is entitled to claim compensation for any type of injury either small or long term. The evidence of assault if any like videos and eye witness of the incident should be preserved including that written in the case sheet of the patient that such an incident has been created in the hospital premises.

Fighting out and booking a case after the assault by the lawyer of the doctor is very essential to claim for compensation.

(14) If a newspaper publishes a false report on “negligence” of a doctor without proof, can a doctor go to court? What about false news on TV ?

Yes, you can go against the media—(TV included). You can put your grievance to the press council of India, Information and Broadcast ministry, police case

for falsified information, criminal intimidation, criminal defamation; and in civil side, put a huge claim of defamation. Also take help of your professional association, which ought to be strong and fighter, medicolegal experts, lawyers, who will guide, support and raise even funds to get injustice removed and the offender being punished.

The doctor has to send a legal notice to the chief editor or the media channel stating that by this false news, he has faced significant defamation and also financial losses. Following which if there isn't any an

appropriate reply for them the doctor can file a criminal defamation case against the media cell.

Keep good rapport with local media and if any such false news is published see it to it that you try to give an appropriate factual clarification. If still it continues to defame you, file a criminal defamation case.

Thank you Dr TN Ravisankar, Dr Jayant Navarange, Dr Dinesh Thakare, Dr Pavankumar Patil and Dr Ashok Shukla, for giving the invaluable insight regarding the medicolegal issues regularly faced by doctors.