

Medical Negligence

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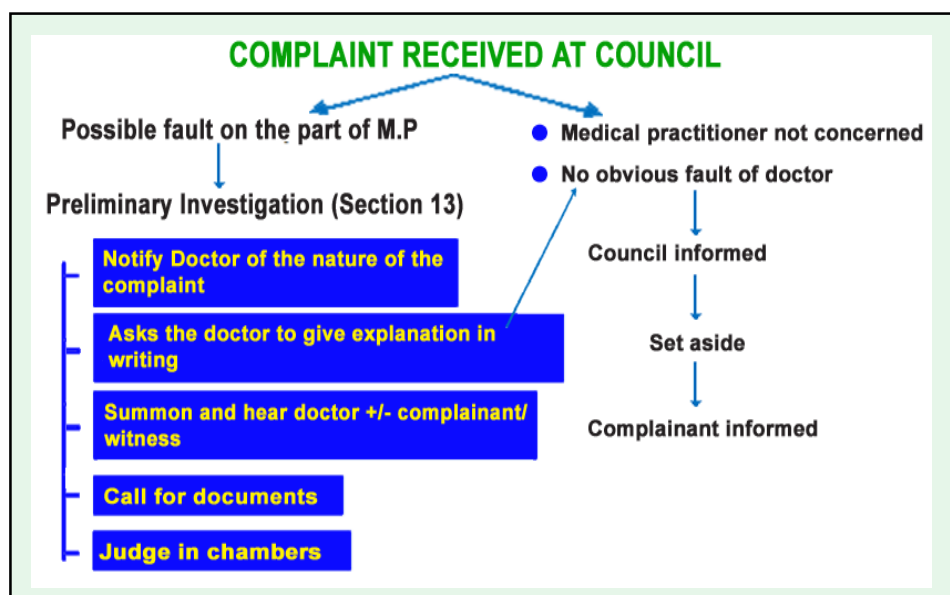
As per the Medical Council Act, “negligence” includes failure on the part of a registered person to exercise the proper and timely care expected from a registered person;

The Burden of proof that the doctor is negligent lies with the Patient under usual circumstance

To succeed in a claim for negligence, a patient must prove, on a balance of probabilities, the following :

- The defendant doctor owed him a duty of care
- The defendant doctor breached that duty by failing to exercise the necessary level of care
- Harm and injury was caused by that breach and
- He suffered damages which was not too remote (*ie, it was foreseeable by the doctor*)

The flow chart of a case of alleged medical negligence at Medical Council



The law has made it mandatory that the prosecution of doctors cannot be made until it is accompanied by the credible opinion of another competent doctor supporting the charge of rashness or negligence. Doctors accused of rashness or negligence may not be arrested simply because charges have been levelled against them.

Preventing Medical Litigation :

1. **You are a professional person so you must have professionalism. Your way of talking, your dressing and behaviour everything matters.** Some key areas you should maintain sincerely: a. **Dress like a doctor** b. **Speak like a doctor.** and c. **Behave like a doctor.**
2. The registered medical practitioner **must not guarantee cure of his patient irrespective of clinical condition of the patient.** He should **not exaggerate or minimize** the clinical condition of the patient.
3. **He should keep his professional knowledge including technical advances up-to-date** by participating in CME, Conferences, seminars, workshops and regular studying recent edition of standard text books, reputed journals etc. **There is no end of studying for a medical professional.**
4. **The capacity of a professional colleague and his efficiency and knowledge should not be publicly criticised. Follow PROFESSIONAL ETIQUETTE**
5. The same rule is applicable for **senior doctors while on round with junior doctors including interns, house physicians, post graduate trainees. If the visiting notices that certain mistake has been done by any junior doctor, he should never openly criticize the junior doctor before the patient or patient party.**
6. It is not wise to accept patient **beyond your speciality and qualification and degree of competence.**
7. He should apply due care/ reasonable care and skill during the treatment of the patient.
8. He should take **written informed consent in all steps of treatment** irrespective of any risk involved and apply the **rule of full disclosure** either to patient or the next of the kin of the patient with due consideration of therapeutic privilege.
9. **Always inform your patients regarding all foreseeable, known and expected risks** involved in the process of diagnosis and treatment.
10. Blanket consent has no role in medical practice. It is not legally valid.
11. Implied consent should not go beyond physical examination involving inspection, palpation, percussion and auscultation. For genital (including pubic and Suprapubic region), rectal and breast examination always take written consent.
12. Any consent should be taken before a disinterested third party (better take two independent witnesses).
13. **It is advisable that consent should be taken from both husband and wife if either of them is going to have a treatment which may cause sterility or impotence.**
14. **Laboratory investigations should be advised whenever necessary to come to a sound diagnosis or to confirm a clinical diagnosis.** Never miss to advice X-ray examination (or CT and MRI whenever indicated) when you are suspecting bony injury or foreign body in wound.
15. **Condition of the patient and the treatment are to be regularly recorded in detail as mentioned in the section of medical record. Medical record of the patient must be complete but relevant and should be in chronological order. Tampering must not be done in any ways.**
16. **Preserve medical records as per the guidelines** laid down by the MCI, Ministry of Health and Family Welfare, Govt of India or as per the provisions of your State Health Ministry
17. **Patient's condition is to be assessed regularly, in different hours of the day and night by the doctors of different tires associated with the treatment of the patient** including Unit-in-charge, interns, housestaffs, post graduate trainee, SR, RMO etc so that even a early complication can be detected by the resident doctors and consultant can be informed accordingly.
18. Unit in charge should be well aware of the functions of the trainees working under his supervision, involving treatment of the patient.
19. He should consult a professional colleague whenever necessary
20. The condition of the instruments or equipments must be checked regularly
21. **Always check yourself and also ask the nurse to check cautiously before injecting a particular drug.** Particular attention to be paid on the **label of a medicine** while giving it to a patient for internal use.
22. **Never mix two or more different types of injectable drugs in a single syringe before giving injection to the patient.** It may produce chemical reaction which is not known and cause

- adverse reaction and even anaphylaxis in a patient. Instruct the nurses about the same.
23. Whenever necessary, **the patient should be immunised** against a disease.
 24. **Injury due to assault and poisoning** cases should be specially dealt with. Always take a second opinion.
 25. **No method should be tried beyond the skill of the doctor concerned in which he is not confident.**
 26. **Always treat patient maintaining accepted standard treatment protocols**
 27. Experimental treatment should be generally avoided. But if it is necessary then it should be done only with the written informed consent of the patient or the guardian of the patient.
 28. During any emergency, the patient should not be left unattended except when there is more emergency of another patient. **Never leave a pregnant woman unattended during active stage of labor.**
 29. Sensitivity test should be performed before injecting a drug which is known to cause allergic reaction or anaphylaxis. **Please remember a previous negative history of sensitivity to a drug or negative result of skin sensitivity testing never rules out the possibility of future adverse fatal anaphylactic or anaphylactoid reaction in an individual.**
 30. **Prescription is better to be given in printed format.** If not possible then write the prescription in clear, legible handwriting in capital letters. Follow the guidelines laid down by MCI in relation to prescription.
 31. The prescription must contain clear instructions to the patient in relation to **medicine, diet, life style modification, follow-ups** etc. Always mention to inform you or to come to you whenever necessary.
 32. **Never assess the condition of the patient by hearing over telephone**, ask him to visit you if possible or otherwise you can make a home visit to see the patient.
 33. Never tell any prescription to the patient or any family member of a patient over telephone as there is a high chance of misunderstanding the name of the medicine or its dosage.
 34. **Anaesthesia should be administered by a qualified and experienced doctor.**
 35. **Necessary pre-anaesthetic check-up** should be done in cases of elective surgery.
 36. Anaesthetist should not leave the patient before the patient's full recovery from anaesthesia.
 37. **In case of death of the patient under anaesthesia or on the operation table**, an inquest should be recommended by informing the police.
 38. Surgical procedures should be carried out in those **hospitals or Nursing homes where there is adequate infrastructure and qualified man power including proper anaesthetic support** and moreover those institutions should be capable of managing post operative complications.
 39. **During the course of surgery if any complication arises or the surgeon is forced to change the agreed course** which he did not plan before starting the operation, and for which informed consent has not obtained, but it is necessary for the benefit of the patient, in such case the **surgeon himself should communicate with the relatives of the patient** to take their consent and in no case he should delegate this duty to any junior doctor/ nurse/ anaesthetist.
 40. Before the surgery **informed consent should be taken separately for anaesthesia**, in a separate form.
 41. Informed consent is essential for blood transfusion.
 42. **Informed consent should be taken directly by the doctor under whom the patient was admitted/ the chief surgeon going to operate on the patient and the chief anaesthetist who is going to give anaesthesia**, and never by other team members involved in the treatment of the patient or any members involved in surgery or anaesthesia.
 43. **Informed consent must be obtained before a particular procedure**, not during the time of admission in hospital.
 44. Due care must be exercised **while choosing an assistant** during an operation or otherwise.
 45. **Post-operative care should be optimum involving liability of the surgeons and anaesthetists.**
 46. **If the doctor is unable to attend the patient due to any cause for the time being**, then the patient should be informed of the same, well in advance with the advice to arrange for a competent substitute.
 47. **Whenever necessary, the patient should be referred to another higher centre with availability of better facilities if your facility is inadequate to manage the case.** But never refer to another centre which is also incapable of managing the same. Also the **hospital should provide adequate support and facilities during the process of transfer.**

Acceptable conclusion is —

- The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care.
- A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field

Landmark judgements in medical Negligence :

Case Laws Related to Legal Maxim In India

There are several case laws in India where the principle of *res ipsa loquitur* has been applied in cases of medical negligence. Here are some examples:

1. Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Babu Godbole (1969)[i] :

In this landmark case, the Supreme Court of India held that the principle of *res ipsa loquitur* could be applied in medical negligence cases when the facts and circumstances of the case suggested that negligence had occurred, and when the burden of proving negligence was on the defendant.

2. Spring Meadows Hospital and Anr. v. Harjol Ahluwalia (1998) [ii] :

In this case, the National Consumer Disputes Redressal Commission (NCDRC) applied the principle of *res ipsa loquitur* to a case where surgical patient suffered from an injury to their urethra during surgery. The NCDRC held that the injury was of a type that would not ordinarily occur in the absence of negligence, and that the burden of proof was on the hospital to prove that they were not negligent.

3. Poonam Verma v. Ashwin Patel and Ors. (1996)[iii] :

In this case, the Supreme Court of India applied the principle of *res ipsa loquitur* to a case where a surgical patient suffered from a facial nerve injury during surgery. The court held that the injury was of a type that would not ordinarily occur in the absence of negligence, and that the burden of proof was on the defendant to prove that they were not negligent.

4. Jacob Mathew v. State of Punjab (2005) [iv] :

In this case, the Supreme Court held that *res ipsa loquitur* could be applied in medical negligence cases where the injury was of a type that would not ordinarily occur in the absence of negligence, and where the facts surrounding the injury suggested that the healthcare professional was responsible.

Related Provisions For Medical Negligence In India

- **Section 304A of the Indian Penal Code** : This section deals with causing death by negligence. If a medical professional causes the death of a patient due to negligence, they can be punished with imprisonment for up to two years or a fine, or both.

- **Section 337 of the Indian Penal Code** : This section deals with causing hurt by an act endangering life or personal safety. If a medical professional endangers the life or safety of a patient due to negligence, they can be punished with imprisonment for up to six months or a fine, or both.

- **Section 338 of the Indian Penal Code** : This section deals with causing grievous hurt by an act endangering life or personal safety. If a medical professional causes grievous hurt to a patient due to negligence, they can be punished with imprisonment for up to two years or a fine, or both.

- **The Consumer Protection Act, 1986** : Under this act, patients have the right to file complaints against medical professionals and seek compensation for medical negligence².

Latest Updates :

Bharatiya Nyaya Sanhita

Punishment for the doctors for criminal negligence: Currently, medical negligence resulting in deaths is punishable under Section 304A of the Indian Penal Code (IPC) with imprisonment of up to two years, a fine, or both. Previously, in the BharatiyaNyaya (Second) Sanhita (BNS) 2023, Clause 106, the punishment was up to five years. However, the amended (BNS) 2023, clause 106 (section-1) has reverted to the original IPC terms ie, punishment of two years and fine.

The new Consumer Protection Act came into effect in June, 2019.

Section 2(42) of the act defines 'services' however the section clearly does not include 'healthcare' within its ambit. The word has been not specifically included but not even excluded because of the words of the section which clears that the services are not restricted and limited to the meaning as given but may also include definitions which may have the same meaning and effect. By this, the legislature has created an ambiguity as to the "healthcare" services, whether included under the Act or not.

However, the Supreme Court while laying down the law upon the relevancy of Consumer Protection Act, 2019 on services rendered by the doctors held that the doctor who has drawn salary from the hospital but rendered his services for free shall not fall under the Consumer Protection Act³.

FURTHER READINGS

- 1 "Textbook of Forensic Medicine and... by Anil Aggrawal." <https://www.amazon.in/Textbook-Forensic-Medicine-Toxicology-Aggrawal/dp/8177394193>.
- 2 "Medical Negligence Laws In India - Legal Service India." <https://www.legalserviceindia.com/legal/article-10686-medical-negligence-laws-in-india.html>.
- 3 "The Consumer Protection Act, 2019: A critical analysis from a medical" 27 Nov. 2023, <https://ijme.in/articles/comment-the-consumer-protection-act-2019-a-critical-analysis-from-a-medical-practitioners-perspective/?galley=html>.