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MEDICOLEGAL KNOWLEDGE- AN AWAKENING CALL FOR DENTIST

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ABSTRACT

In the past golden days doctors were considered as demigods. Treatment done or advised by the doctor to cure the disease was accepted by the patient without any doubt in the mind. Unfortunately, if any undesirable event occurred during the course of treatment; it was well accepted by concern people without blaming that doctor. However, in the present era of increasing health and legal awareness in the society particularly in urban population, patient fail to consider doctors as life saviour but treat them as service providers for monetary exchange. The doctor-patient relationship has undergone a drastic transformation after enactment of Consumer Protection Act (CPA), enabling the patient to sue the doctor for negligence. This may have debilitating effects on doctor's professional as well as social life. Hence, it is need of the time for medical professionals to keep themselves updated with the legal aspects of the medical practice.

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INTRODUCTION

Earlier doctors were considered as savior of life next to the God. The treatment done by doctor was accepted faithfully by the patient and relatives without any suspicion. Dentistry as a part of the noble health profession aims to alleviate patient's sickness and sufferings to improve their general health and well being. Dental practice is a blend of art and science. It is a service-oriented, liberal profession having a self-regulating code of ethics. As per Indian Constitution, 'A right to health' is a fundamental right of all individuals including patient and the doctor. However, the protection of patient's right should not violate the integrity and autonomy of medical profession.

In the modern era of health awareness this noble profession of health services is looked upon with doubt and suspicion and dentistry is not an exception to this. The scenario is evident from recent physical assaults to doctors providing medical services as well as increased number of litigations for compensation of alleged negligence. As a result, the health professionals have to comply with legal issues which may have deleterious effects on their professional and personal life. The dental professionals treat patients from various socio-economic strata. They are expected to have reasonable degree of skills and knowledge in order to exercise a reasonable degree of care. However there can be perceived incidences of sub-standard degree of care, breached duty of care or occurrence of an injury in the course of treatment. At this

instance if the dentist is prepared and equipped to handle such situation, he could reduce the adverse effects; so that his practice and his reputation in the society will not be affected. Regarding the management of legal issues, to support and boost the confidence; the dentist should have the legal knowledge of his rights, his duties, negligence and standard of care.

Some legal terms the dental health professional should know:

Duty to take care and standard of care

This deals with relationship between doctor and patient where there is an obligation upon the doctor; to take proper care to avoid causing injury to the patient in all circumstances of the case by their professional ethics. In law of tort, the standard of care is the degree of prudence and caution required by the individual who is under a duty of care. Every doctor is committed to provide certain standard of care to his patient by his noble profession.

Duty has various aspects including the consultation¹, giving medical advice², maintaining confidentiality³, making a diagnosis, referring the patient to specialist and giving or prescribing any treatment⁴, informing the patient in detail about treatment that would be carried out⁵, subsequent adverse effects⁶ and communicating the risk involved⁷.

Negligence

In layman's term, the negligence is lack of care but in legal term it means the breach of the legal duty or obligation which is casted upon the professional by his profession. Dental practitioner rendering the treatment to patients has impliedly agreed to have sufficient knowledge and skills to perform such treatment and he is bound to have certain standard of duty and care in his practice. A breach of such duty creates opportunity to the patient to take the cognizance of such negligence and initiate legal action against that doctor.

Negligence in legal terms

Alderson defined negligence as "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do".⁸

The following acts have designated to be negligent in the eyes of law;⁹

1. Where the person is bound to have certain standard of duty and care by his professional ethics and he fails to accomplish that duty and care and
2. Act must show the element 'guilty mind' i.e. *mens rea* and
3. Due to that act the patient has suffered injury /damage and
4. The act and subsequent damage should be closely related (nexus) or inter related.

The well known *Latin maxim* in the law is "Res Ipsa Loquitur" i.e. "the thing speaks for itself"¹⁰ is applied for the determination of the negligent act. This maxim is applicable only when it is proved that the accident or mishap could not have occurred if there was no negligence on the part of the doctor and the overall scenario concurrently exhibit that only the operating doctor or staff was careless or negligent.

Legal liability of dentist in case of negligence

1. Civil liability/Tortuous liability
2. Criminal liability

Civil liability /Tortuous liability: Self liability and vicarious liability

When a dentist is primarily and directly responsible for the negligent act in his clinic or hospital it is called primary liability. Whereas the dentist employed in a hospital or institution and is found guilty of negligence; the hospital has to bear the liability for the negligence in the capacity of employee (Master) called vicarious liability as in Cassidy Vs. Ministry of Health case¹¹. The remedy for tortuous liability is compensation awarded by the appropriate court usually in the form of money.

Criminal liability

Criminal negligence is a crime against society and usually punished with imprisonment or fine or both. Under Indian Penal Code (IPC), 1860 the provisions for criminal liability in regard to negligence are:

IPC Section 304-A: Negligent homicide

Section 304-A of IPC regarding negligence states that, "Whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with

imprisonment for a term of two years, or with a fine, or with both."

The Supreme Court of India (SC) states that "the doctors should not be held liable criminally unless it is *prima facie* evident and an opinion from another competent doctor, preferably a doctor from the same field of health sciences working in Government hospital, supported the alleged charges of that negligent act." Thus, genuine error in judgment or mere carelessness will not make the health professional criminally liable under IPC Section 304-A, but doctor is directed to pay compensation to the complainant, as decided by appropriate Court.

IPC Section 336- An act endangering the life or personal safety of others (even if there is no evidence of damage), Whoever does any act so rashly or negligently as to endanger human life or the personal safety others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees, or with both. Eg. Extraction done in a patient with history of rheumatic heart disease without antibiotics prophylaxis to prevent endocarditis.

IPC Section 337- A rash or negligent act causing simple injury, Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both. Eg. Pain and cellulitis after careless extraction or in case of not following aseptic protocol during the treatment.

IPC Section 338 - Negligent act resulting in grievous hurt, Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. Eg. Fracture of jaw due to excessive or improper force applied during extraction.

Consumer Protection Act and Medical profession

Medicine was considered as noble profession and medical practitioners as saviors until the enactment of Consumer Protection Act (CPA) in 1986. CPA was enacted to provide for better protection of interest of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer's disputes and the matters connected therewith.

Three terms strategically mentioned in CPA are; Consumer, Service and Deficiency. The word 'Consumer' is defined in Section 2(1)(d) of the Consumer Protection Act, 1986 as "Consumer means any person who (a) buys any goods for a consideration and includes any user of such goods but does not include a person who obtains such goods for resale or for any commercial purpose, (b) Hires or avails of any services." The term 'Service' is defined in Section 2(1)(o) of the Act as "Service means service of any description which is made available to potential users but does not include the rendering of any service free of charge or under contract of personal service". Whereas Section 2(1)(g) has defined 'Deficiency' as any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force

or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. The categories of services include Banking, Financing, Insurance, Transport, Processing, Supply of Electrical or other Energy, Lodging, Housing, Construction, Entertainment, Amusement, News or Information.

In 1995 a landmark decision was held by SC in Indian Medical Association Vs. V.P. Shantha and others¹² that, the term 'Service' defined in the CPA, 1986 should be made applicable to medical profession. SC held that medical practitioners giving medical or surgical services to patients in the form of consultation, diagnosis and treatment fall within the ambit of the term "Service". The SC also mentioned that, the relation between doctor and a patient is with certain degree of mutual confidence and trust. Since there is no relationship of master and servant between the doctor and the patient, the contract between doctor and his patient cannot be treated as contract of personal service but is a contract for services and the service rendered by the doctor to his patient under such a contract which is covered in the definition of service contained in Section 2(1)(o) of the CPA. SC also clearly outlined which medical services to be included or excluded from the ambit of CPA.

Which medical services are covered under the CPA?

1. Charged medical services including medical and surgical rendered to a patient by the medical practitioner by way of consultation, diagnosis and treatment.
2. Service rendered at a non government hospital/nursing home where charges to be paid by the persons availing such services.
3. If the person or his family members availing the charged medical services by the doctor or hospital or nursing home and taken a medical insurance policy where the charges for consultation, diagnosis and medical treatment are insured by the insurance company or by the employer.

Which medical services are not covered under the CPA?

Medical service rendered by a doctor in a Government or non-Government hospital or health care centre is free of charge or the payment was taken for registration purpose only.

In general dental practice, the acts which might be considered as negligent acts:

In General dental practice

1. Failure or negligence in maintaining patient's case record – As a standard of care the dentist is expected to keep all the records (printed or digital) as the evidence for future personal and medico-legal reference.
2. Failure or negligence in recording patient's medical history- An updated record of patient's medical history such as allergy to any drug, past history of any major illness or any dreadful disease which may affect or interfere in the medical treatment to be given to the patient as on date.
3. Failure to take consent of patient or his relatives - Failure to obtain proper written consent expressed, implied or informed consent from the patient and relative or parents in case of minor patient; which includes verbal /written explanation regarding the present illness, available treatment options, their

advantages and related complications of the said treatment.

4. Carrying out surgical procedure without having sufficient clinical set up and emergency drugs in the clinic or hospital.
5. Practicing dentistry without a proper dental qualification, degree and registration.
6. Failure to diagnose precancerous lesions in oral cavity and not referring the patient to the specialist when it is required.
7. Carrying out certain surgical procedure without having sufficient knowledge, skill and expertise and without medical consent of patient with history of known major illness including blood disorders, cardiac disease etc.
8. Not maintaining hygiene or using unsterilized instruments or gloves in the course of carrying out the treatment.
9. Not studying the radiograph properly and operating on the wrong tooth.
10. Damaging other or adjacent tooth while carrying out treatment of affected tooth.

During tooth extraction (Exodontia)

1. Injecting local anesthetic (LA) without inquiring about medical history or allergy to LA leading to anaphylactic reaction.
2. Extraction of wrong tooth.
3. Injuries to the nerves of the tongue, jaw, chin and lips (permanent or temporary in nature) during extractions.
4. Fracture of mandible during tooth extraction.
5. Lingual nerve injury leading to parasthesia, anaesthesia and or dysguasia (Loss of taste sensation).
6. Failure to remove foreign object from surgical site when it is deemed necessary.
7. Sinus perforation (when it is unexpected/ unrelated).
8. Secondary infections leading to hospitalization of patient.
9. Slipping of instrument in patient's airway passage.

In Endodontics and Pediatric dentistry

1. Wrong diagnosis leading to root canal treatment of wrong tooth.
2. Inadvertent use of intra canal medicament, irrigating solution passing into peri-radicular tissue leading to periapical tissue damage, alveolar bone necrosis or subjacent nerve injury.
3. Broken instrument (file, reamer) in the root canal followed by hiding the situation from patient.
4. Slipping of endodontic file or instrument leading to its aspiration or ingestion.
5. Extraction of deciduous teeth too early when it could be restored.
6. Not giving space maintainer when it is indicated.
7. Failure to give proper post operative instruction to parents and the child after injecting LA in case of child patient leading to injury, ulceration of lip, cheek or tongue.

In orthodontics

1. Root resorption, mobile teeth, tooth becomes non-vital tooth due to excessive forces applied during orthodontic treatment.

2. Collapsed occlusion due to improper orthodontic treatment.

In prosthetic dentistry

1. Faulty, ill-fitting denture causing pain, soreness and discomfort to the patient.
2. Pulp exposure of vital tooth during crown preparation due to overzealous preparation.
3. Open margins, overhanging restorations, and poor occlusion especially in full-mouth rehabilitation cases due to lack of sound treatment planning.

In periodontics

1. Failure to diagnose or treat periodontal disease in a reasonable time.
2. Radiographs were not taken routinely and periodontal probing was rarely or never recorded of known periodontally compromised and already treated patient.
3. In periodontal cases attempt to treat beyond their level of competence and failure to refer cases to the appropriate specialist.^{13,14}

In Implant dentistry

1. Injury to subjacent nerve.
2. Perforation of sinus due to overzealous bone preparation.
3. Peri-implantitis leading to implant mobility.

How to protect oneself against arising legal issues for doctor or dentist?

Being a dentist as a oral health care provider we must be well prepared to tackle such unseen events which may lead to medico-legal hassles.

1. Emergency management of patient- If it is beyond the scope and skills of the dentist to handle emergency situation, he must do the first aid and refer the patient immediately to the tertiary care centre for further treatment.
2. Preserve every patient's complete record and the written remarks, consent forms signed by patient and his witness or parents in case of minor.
3. Maintain record of patient's medical history, current medical treatment if any and drugs to which the patient is allergic.
4. Ensure that all instruments used by the dentist are sterilized before and after every use and aseptic clinical conditions are maintained all the time.
5. Whenever some mishap occur in treatment procedure inform it to the superior doctor, if any and also clearly make the patient aware of such mishap. Be sympathetic, expressive and communicate your genuine concern about the unfortunate mishap. Answer all the doubts to patient or their relative regarding mishaps keeping in mind the psychological status of patient and his relatives. Doctors who are frank in communication and concern are much less likely to be dragged in legal complications.
6. Refer the patient to appropriate specialist when required.
7. He should not treat or refuse to treat the patient solely on religious grounds. But can refuse the treatment when it is beyond his expertise after first aid.

8. If the dentist is of the view that he would not be able to complete the treatment in an appropriate manner, he should not initiate the treatment or inform patient well in advance.
9. Do not use words like guarantee or warranty in any health profession.

Defensive grounds for doctor in case of negligence to plea in the court of law

Although even after taking all due care, if some mishap occurs and patient files a complaint of negligence against the doctor, following are some defending points which could help the doctor to resolve the legal issues.

1. Patient's negligence: Negligence on the part of patient. Eg. Patient with history of cardiac blockade and on aspirin (anticoagulant), advised to stop aspirin 3 days prior to extraction and 2 days post extraction by his cardiologist. After tooth extraction, patient was again informed by dentist about not to spit blood and follow cardiologist's advice. Patient spat continuously and took aspirin on its own and due to this he was admitted to hospital for significant blood loss. In such situation only patient's negligence to follow doctors advise lead to such complication so dentist was not liable.
2. Contributory negligence: It means negligence by the patient or a care taker of the patient in addition to the negligence from doctor side. It is a defence in only civil negligence and not in criminal negligence.
3. Therapeutic misadventure (Medical maloccurrence): It is an accident or mishap or mischance. Eg. Patient showed no sensitivity to test-dose of lignocaine injection and develops anaphylactic reaction after administration of nerve block. Here no one is at fault, it is only a mischance.
4. No duty owed to patient or no nexus has been established between the act and damage alleged. Eg. Once the patient is treated for pain in mandibular left first molar with root canal treatment, patient can't blame the dentist for his pain in badly carious maxillary left first molar requiring extraction due the root canal treatment of mandibular tooth.
5. Duty discharged according to prevailing standards: Standardized treatment protocol is followed.
6. Medical misadventure: It means maloccurrence. The undesirable outcome of the treatment which is unrelated to the quality of medical care provided to patient. Eg. After root canal treatment, patient advised crown over the tooth but tooth showed vertical fracture requiring extraction after a week due to biting on hard food stuff by the patient.
7. Error of judgment: SC clearly states that mere error of judgment would not amount to negligence. The Supreme Court in Laxman Balakrishna Joshi Vs. Trimbak Babu Godbole¹⁵ ruled that the doctor has discretion in choosing treatment, which he proposes to give to the patient and such discretion is relatively greater in cases of emergency¹⁶. In Dale Vs. Munthali¹⁷ case the doctor diagnosed the patient as suffering from influenza, when in fact he had meningitis and negligence was not concluded in failing to diagnose meningitis.
8. Res judicata: It is a Latin principle of law states that the thing has already been decided. It means when the patient has initiated against the doctor in one court of

law and decided by that court, patient cannot start proceeding in other court for same thing and on same grounds.

9. Limitation period: Patient has to file complaint in any forum or court of law within the period of 2 years after the occurrence of event of negligence. Beyond this period the complaint would not be taken in to cognizance except in some cases.

Some landmark medicolegal cases relating to dental practice mentioned in literature

1. **Parmley V/s Parmley (1945) case**¹⁸ Dentist was held negligent for extracting more number of maxillary teeth having severe periodontitis without the consent of patient despite of the decided treatment plan.
2. **Ishwardas V/s VK Gupta (1992) case**¹⁹ Patient suffered soreness and ulcers due to an improper fitting of the denture, thus the dentist was held liable for negligence.
3. **Dr. Rasik M. Shah Vs Dr. A.R. Kalra (2009) case**²⁰ Complainant's wife has pain in mobile mandibular third molar. He consulted Dr. Kalra for his wife where a lady doctor advised extraction due to abscess near third molar tooth. Patient's husband insisted incision and drainage but dentist insisted extraction and extracted the tooth. No relief was sought to patient even taking medication and after multiple visits to Dr. Kalra. Patient was taken to other surgeon where aspiration drainage was done and patient had relief. Complainant filed a case of negligence on the part of Dr. Kalra. It was held by Maharashtra State Commission that when two methods of treatment are available, adopting any one of the standard method in given circumstances does not amount to negligence. The treating dentist has taken all due precautions and care so, dental surgeon was not negligent.
4. **Charles K. Thomas (Dr.) Vs Mercy Jose II (2010) case**²¹ Patient Jose approached Dr. Thomas for treatment of upper left canine and first premolar teeth in 2002. Dr. Thomas did root canal treatment of canine and first premolar. In 2005 patient had pain in the treated side for which she consulted ENT surgeon who noticed broken portion of reamer or file in the root canal of premolar tooth. It was alleged by the patient that Dr. Thomas suppress the fact of breakage of instrument in the root canal and patient suffered due to infection in her premolar tooth. It was held by Kerala state Commission that, suppression of information amounts to deficiency in service, as it was the duty of doctor to inform the patient about the fact. Also, in absence of production of treatment records by doctor an adverse inference could be drawn against the dentist.

CONCLUSION

Doctor patient relationship is a confidential and trust worthy relationship. The service rendered by health professionals to the human beings is probably the noblest deed of all, thus in the wide interest of the society; care and caution should be taken before initiating legal action against any doctor. The frivolous complaint might have the 'deterrent effect' on doctor-patient relationship and would have negative effects on the practice and the reputation of the doctor. Friendly clinical environment, genuine concern towards patient's health and confident, open-sympathetic talk usually relieve majority of such legal tangles. Unfortunately when such event arises, the health professional including dentist should be cautious enough about his duties and be aware about the updated legal provisions related to their practice.

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