

## A Review Of Basic Concept Of Legal Aspects In Medical Practice In Pediatrics

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### Abstract:-

A Medico-legal case is a case of injury or ailment where attending doctor after taking history & clinical examination of the patient thinks that some investigations by law enforcing agencies are essential so as to fix responsibility regarding the case. But now a days many medico-legal case occurs in which the practitioner is being blamed, so important to know Duties of doctor, rights of doctor, liability, negligence, consent regarding every procedures done to the patient & its documentation.

**Keywords:-** Doctor, liability, Negligence, consent, documentation, patient.

### Introduction:-

Ayurveda is an ancient science, In those days medical profession was considered to be a noble field. The patient's faith and trust in doctors was so much that a doctor was equated to an "Angel or Semigod". Gradually, this relationship is turning into a love and hate phenomenon. In this era of graduation and post graduation, the focus of medical profession is progressing from a noble one to a commercial one. The increasing cost of medical education, equipments, construction of clinics and hospitals are to some extent responsible for the commercial approach on part of doctor. Patients now are also more interested in facilities and good looking hospital rather than quality of care and competency of doctors. In this scenario, litigations related to medical practice are on the rise.

### Duties of Doctor<sup>(1,2,3,4)</sup>:-

Every doctor has some basic things to do as he approaches a patient(1). He must *listen* to the patient (take proper history) and *examine* him carefully. A doctor has to *attend* to the patient and give *diligent care*, once he decides to treat the patient. He must *explain* the relevant facts related to the illness and give *proper medicines*. The doctors must have average, recent *knowledge and equipments* in possession, as per their graduation & post graduation. The practitioners must be able to *foresee* the complications and *refer* the patient at proper time. Doctors must also maintain a proper *record* of their patients.

### Rights of Doctor<sup>(1,2,3,4)</sup>:-

Doctors don't just have duties, they also have some rights.

- A doctor has a right to *turn away* a patient before starting treatment but he should provide minimal basic care especially in an emergency situation.
- He has a right to select *the drugs* from wide range of options available, supported by standard medical practice.
- A doctor can also select *the investigations and method of treatment* depending upon various factors. He/she should obtain a written refusal in case the patient does not want to do as advised.
- He/she *can delegate* the powers to properly trained personnels or colleagues, usually with the willingness of patient. However, a better alternative for the practitioners is to start group practice so that one of the regular consultant is always available.
- A doctor can decide regarding visits, *fees* to be charged and to maintain the patient's *record* including its secrecy in certain specific situations.

### Different laws:-

#### (a) Civil Laws

Every individual has a private right and in order to protect the right there is a legal remedy. According to Law of Torts, a doctor shall be responsible for his negligent act. According to Sec. 70 of Indian Contract Act, there is a contract (oral, written or implied) between a doctor and a patient, and both parties are bound by it. If a doctor doesn't give complete or proper treatment then he/she may be held liable. Similarly, if a patient doesn't pay the fees, doctors can file a civil suit. Doctors can take advances or deposits (this is legal) before starting treatment but they can't keep the patient in confinement

(this is against law) on the ground of nonpayment of fees. Civil suits most of the times are expensive, time-consuming and cumbersome.

**(b) Criminal Law**

There are some public wrongs. In order to protect the community, the state/government has the right to punish the wrong doer, through various agencies. Criminal laws and police are usually not involved in doctor-patient relationship unless there is gross rashness or negligence resulting either in death or serious injury. Some of the common sections of Indian Penal Code (IPC) which are applicable to doctors include: (i) Sec. 52 which defines what is good faith; (ii) Sec. 87-91 which are related to consent, (iii) Sec. 304-A which is related to death of patient due to negligent act; (iv) Sec. 312-316 are related to causing abortions or miscarriage without proper consent; (v) Sec. 319-322 deals with causing grievous hurt, or disfigurement endangering the life; (vi) Sec. 340-342 which are related to wrongful confinement of patient; and (vii) Sec. 499 which is related to defamation.

**(c) Other Laws**

These include the MTP Act, IT Act, Drug Act, Labour Laws and Medical Council's Act. These are intended to have a watch on medical practitioners.

Once the doctor decides to take care of the patient, the liability starts.

**What is Liability<sup>(1,2,3,4)</sup>**

Every individual is liable for his wrongful acts under various laws. The wrongful act can be *an act of commission or an act of omission*. "Means" guilty mind with intention, knowledge and awareness of doing wrong is more punishable than the acts done without willful intent. Negligence, incompetence, mal-practice, etc. constitute the liability of medical persons. *Various liability* involves the acts of staff members, partners and locums in different situations. The doctors shall be liable for the act of their staff if they are unqualified. But if the staff is qualified and makes a mistake then the doctor may not be held directly responsible. For example, doctor has prescribed some medicines or injections correctly and the nurse (qualified) makes a mistake; in such cases, the doctor is not responsible for her act. However, if the nurse is unqualified, then the doctor shall be held responsible. Thus depending upon the situation, the doctor or his staff shall be liable for their act of negligence.

**Negligence<sup>(1,2,3,4)</sup>**

Negligence is an *act of commission* (positive act) or an *act of omission* (failure to act) which a prudent man of average skill and objective standards should not perform.

If there is a breach in duty undertaken, resulting in damage or injury—this is negligence. Greater the risk voluntarily undertaken, greater care

and skill must be exercised. According to law a pediatrician will be responsible to a greater extent as compared to general practitioner if there is negligence while managing a child (because a pediatrician is more skilled and competent for treating a child) If a doctor has not acquired special skill and competency (*i.e.*, he/she is not a graduate) then of course average skill and care are sufficient to avoid the charge of negligence.

The degree of care is usually proportional to the duty undertaken. Negligence is many times difficult to prove. The burden of proof is on the patient or relatives except in cases where relatives have no access (*e.g.*, operation theater, intensive care unit, nursery, etc.) *Contributory negligence, known complications, unexpected results, difference of opinion and emergency care are the usual defenses in case of negligence.*

**Some Common Situations**

Some common situations with important medico-legal implication are illustrated below:

**(1) Drug/Vaccine Administration**

If there is any mishap while giving any drug or vaccine, then known complications are usual defenses. However, the doctors should have taken all the precautions to manage such complications. Anaphylaxis after Penicillins, Xylocaine and Measles vaccine are known complications. A doctor must do skin sensitivity before giving penicillin, xylocaine, etc. Oxygen, Adrenaline, IV fluids and Steroids must be available in case reaction occurs. It is always better to explain to the relatives that such complications can occur. A written consent is preferable before administering injectable drugs. History of drug allergy shall be recorded before prescribing any drugs which are known to cause allergic reactions.

In case of vaccine related encephalopathy, shock, etc. relatives should be informed of possible complications (written consent is preferred). Proper history of any previous complications must be recorded in writing. For example, before giving triple vaccine take history of any neurological complications, existing neurological deficits, excessive irritability with previous dose, etc.

**(2) Fast IV Fluids**

Sometimes if IV fluid goes at an undesirable fast speed, various complications may occur. The doctor shall not be held responsible if he/she had written proper orders and the nurse is qualified. If the paramedical staff is not qualified, then the doctor shall be responsible. It is better to use pediatric bottles, micro-drip sets or chambers. If

these are not available extra fluid from the bottle may be discarded at the time of starting IV line.

### (3) Mismatched Blood Transfusion

A doctor or qualified nurse must check name and age of donor and recipient along with their respective blood group before starting the transfusion. Pediatrician shall not be held responsible for wrong cross-matching or tests for HIV, hepatitis B infection *etc.* (pathologist shall be responsible). However, it is the pediatricians' responsibility to see the blood is transfused in proper volume and at proper rate. Proper orders for monitoring pulse, respiratory rate, temperature and early signs of mismatched blood transfusion must be given. A valid consent is a necessity before starting any procedure or some specific treatment.

### Consent<sup>(1,2,3,4)</sup>

According to Sec. 90 IPC, a person who consents can't complain. Giving a consent is an act of reasoning and deliberations after balancing the good and evil. The various types of consents can be: (a) Implied consent; (b) Blanket consent; (c) Written consent; and (d) Informed consent. A *valid consent* is that which is given *voluntarily* (without pressure), by an *adult of sound mind* who is not under any intoxication. The consent is obtained *after explanation* and reasonable understanding of facts and *not by hiding facts* or mis-representation of facts. Consent should be *informed* and preferably *in writing*. The consent should preferably be taken in *presence of witness* (two from patient side and two from hospital side).

Sometimes a child is brought to pediatricians by neighbors (parents of child are immediately not available for consent). In such situations if it is a genuine and real emergency, the child can be managed even without consent. The neighbors consent doesn't have legal validity.

### Exception to consent

In the following situations it may not be necessary to take the consent: (i) if you are managing a patient in an Emergency situation; (ii) While working in situations of public interest like during floods, cyclones, earthquakes, *etc.*; (iii) Treating patients in places like mental asylums, orphanages, *etc.*; and (iv) Working under Court order, *e.g.*, in case of smuggling, operations are done

for detecting narcotics or gold kept in intestine or other parts of body.

### Documents<sup>(1,2,3,4,5)</sup>

Documents can be friend as well as foe of medical personnel. Documents are property of hospitals and should be produced on written requests only. Documents carry confidential information of patients and should be released with consent. Well maintained documents may documents are clean, complete, chronological, comprehensive, correct and without manipulations. Documents can be asked for:

- (a) Outdoor patients, indoor admissions;
- (b) Medical termination of pregnancy, medico-legal cases, operations,
- (c) death certificates; and
- (d) other certificates.

### Conclusion

Now a days medicolegal issues are a major problem in clinical practice, so efforts should be made to prevent negligence in clinical practice. Doctor's should know his duties, rights about negligence & consent for every procedure is to be done on patient. Doctor should know about different laws such as criminal law, civil law *etc.*

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