

Professional Negligence & Professional Misconduct in Relation to Medical Practice

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Medical Law & Ethics

The legal and ethical considerations are integral to medical practice in the planning for the care of the patient. With the advances in medical sciences and growing sophistication of the legal framework in modern society and increasing awareness of human rights and changing moral principles of the community at large, doctors and other healthcare workers alike are now frequently caught in difficult dilemmas in many aspects arising from daily practice. There are plenty of examples such as the duty to respect informed consent, truth-telling, breach of confidentiality, disclosure of medical errors, rationing of scarce health resources, biomedical research, organ donation, etc. There is also growing anxiety both within the medical profession and in the community regarding increasing trends of complaints against doctors. From the bitter experience of many doctors who were engaged in complaint in the past, many of them had resulted from failing of their doctor-patient communication skill or inadequate ability to comprehend and resolve dilemmas in clinical settings.

5. Duty to children and infirm
6. Charge for professional service
7. Right to choose a patient
8. Duty to give proper directions
9. Duty to offer proper regime of treatment
10. Duty to notify communicable diseases
11. Examination and consent
12. Duty as regards result of examination

Towards One Another

1. Extend same honor, respect & good behavior as expected from them
2. Should not do or utter anything to lower down the name of colleagues
3. Should not entice patients away from colleagues
4. Free medical service to fellow colleagues

Medical Negligence

- IPC Section 304A, reads as, "304A. Causing death by negligence - 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."

Duties of Medical Practitioners

Towards State

1. Notification of infectious diseases
2. Notice to police
3. Notification of births and deaths
4. Issuing of certificates
5. Respond to emergency military services

Towards Patient

1. Treatment of patient is implied contract
2. Duty to sick
3. Duty to continue treatment
4. Duty to earn confidence

Types of Culpable homicide

- Culpable homicide further divided into two categories:
 1. Culpable Homicide not amounting to Murder (Section 299 IPC)
 2. Murder - Culpable homicide amounting to murder (Section 300 IPC).

Civil Negligence

Following conditions should be satisfied for proving liability of negligence-

1. Duty- existence of duty of care by the doctor
2. Dereliction-failure on the part of doctor to maintain applicable standard of care and skill
3. Direct causation- any damage was caused by breach of duty
4. Damage – lost wages, medical expenses and mental duress

2. by a rash or negligent act not amounting to murder
3. Gross carelessness in the treatment
4. Sec 304A IPC
5. Conducting operations without obtaining written consent from the husband & wife both; which result in sterility.
6. Fraudulent/ illegal Consent
7. Issue of false medical certificates
8. Covering up unqualified persons
9. Canvassing
10. To personally open chemist shop.
11. To prescribe habit forming drugs
12. Disclosing professional secrets of patients.
13. Treating patients under the influence of drink or drugs.

Professional Negligence (malpractice)

- Not supposed to do, or failing to do something that he is supposed to do
- Professional negligence – absence of reasonable care and skill, or wilful negligence of a medical practitioner in the treatment of patient which causes bodily injury or death of patient.

Vicarious liability

- Liability of employer for the negligent act of his employees, within the course and scope of their employment.
- Principle of Respondent Superior

Compensation formula

Yearly income x Remaining years of Superannuation/retirement

Example:

Patient age 30 yrs, retirement age 60 yrs, remaining years 30

Rs.1000, 000/yr x 30 yrs / 2 = 15,000,000

The Minimum Wages Act – Rs 409/day for unskilled person.

Rs.147, 240/yr x 30 yrs / 2 = 2208600/-

Remedy – Amount is to be paid only when negligence is proved

References

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3. Textbook of Agadtantra, A Rashtriya Shikshan Mandal’s Publication,, Ist Edition 2008
4. <https://www.prepladder.com/neet-pg-study-material/forensic-medicine/medical-ethics-forensic-medicine>
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Professional misconduct

Conduct considered as disgraceful or dishonorable by professional breather of good repute and competency.

1. Conducting unnecessary operations e.g. Hysterectomy.
2. Performing or enabling unqualified persons to perform an abortion or any illegal operation for which there is no medical, surgical or psychological reason
3. Undertaking sex determination with the purpose of aborting a female fetus.

Criminal Negligence (malpractice)

1. Medical practitioner prosecuted in criminal court on the charge of having caused death of his patient