

Medical Negligence

Medical negligence litigations are increasing steadily. Ignorance is bliss. But, ignorance of law is an exception. The medical profession is experiencing a very rough weather. Expectations of the society from doctors are sky high. Patients expect to gain more and pay less for the treatment they received. If patient outcome is not as per expectations of patient relatives, they may try to blame treating doctors and expect to get some discount on professional fees and/or some compensation.

Many cases may go unreported due to various reasons. However, the society has become more litigious, people are more aware of their rights, and second opinions are easily available. Medical literature is available in plenty and in easy-to-understand language both on internet as well in print.

Medical professionals have to treat patients as per standard guidelines, satisfy relatives, and at the same time save themselves from possible allegations. Patients and relatives utilize audio–visual media to record the consultations. This has led to increased stress among medical professionals. Incidence of frivolous claims is also increasing day by day.

The patient who has allegation of medical malpractice against his/her doctor has to prove four important elements. They are as follows:

1. Breach in duty of care
2. Treating consultant was in charge of his/her treatment and the patient has nothing to contribute to the bad outcome
3. The patient suffered significant damages or injuries
4. These damages have been caused by lack of standard care which any other doctor of same qualification may not do.

What is Medical Malpractice?

Improper, unskilled, or negligent treatment of a patient by a physician, dentist, or healthcare professional is medical malpractice. It results from departure from right practices of medicine or right standard of care causing damage to the patient.

To error is human. Even best of the doctors can make mistakes. However, the medical treatment offered by a medical professional should be as per standard of care and be agreed by other doctors with the same qualification and experience. There is difference between medical error and medical malpractice. To prove a medical malpractice, there has to be serious injury to the patient. There is no standard

formula to quantify the damages; every case is unique. Minor medical errors do not count as medical malpractice. Complication after a surgery or any medical procedure may happen and no one may be at fault.

The medical professional should keep cool if he/she gets a medical negligence notice. One can get panicky, try to avoid the case by all means, for example, political pressure, use of money for out-of-court settlement, and using services of middlemen to settle cases. Because of these practices, doctors may be exploited by unscrupulous elements including patient relatives, middlemen, and mafia.

A medical professional should always take the help of an expert lawyer to defend his or her case. We should not have legal phobia. One should stay calm, be honest, take guidance of senior colleagues, and importantly, one should not manipulate notes. Keep constant contact with your advocate; try to be present in courtroom for hearing.

How Can It Be Prevented?

1. Communication: proper, regular, and timely communication with the patient and relatives
2. Good communication may avoid a lot of litigations
3. Good record keeping: good records are a good defense. Practice good record keeping
4. No rosy picture or false hopes about treatment outcome
5. Take multiple opinions or involve multiple specialists in patient management
6. Be nice to your colleagues: many cases are because of other doctors instigating patients about wrong treatment given by previous professional
7. Even if you have taken indemnity insurance, do not solely rely on it. False secure feeling may increase your mistakes and may change your attitude toward the patient. Politeness and proper and timely communication avoids many litigations
8. Case selection: challenging cases are potential threat as far as medicolegal consequences are concerned. Take all necessary precautions keeping in mind of possible litigations and anticipate situation
9. Avoid using social media and telephone for consultation and advising treatment.

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