

CONSUMER AWARENESS IN RELATION TO MEDICAL NEGLIGENCE

OVERVIEW:

The word “negligence” itself means failure to take proper care or failure to fulfill one’s assigned duty. The word medical negligence means failure to discharge a duty which resulted in considerable harm to the individual both physically and mentally. If a doctor operated with utmost diligence and care but if the patient died or if a patient dies of side effects of a treatment that wouldn’t constitute medical negligence.

THE INGREDIENTS OF MEDICAL NEGLIGENCE:

The three ingredients which constitute medical negligence are:

- Failure to decide whether to undertake the case or not.
- Failure to decide the right treatment for the patient according to the diagnosis made.
- Failure to administer the right treatment according to the said standards.

GROUNDINGS FOR FILING A COMPLAINT¹:

- 1) Damage to organ due to negligence.
- 2) Wrong treatment due to wrong diagnosis.
- 3) Money receipt or prescription or discharge summary or test reports when not provided.
- 4) When treatment not chosen as accepted and established in medical norms /as per medical research/available medical literature.
- 5) Theory of *res ipsa loquitur* [a thing speaks of itself] - in case any instrument left in the body, a wrong part removed, allopathic treatment given by a homeopathic doctor etc.
- 6) Govt Hospital liable if contribution from the employee’s salary deducted OR Payment made by insurance company.
- 7) Hospital can also be negligent ‘it is a case of non- availability of oxygen cylinder either because of the hospital having failed to keep available a gas cylinder or because of the gas cylinder being found empty.

PROCEDURE FOR FILING A COMPLAINT:

The complainant can file a complaint in any one of the consumer forums based on the pecuniary jurisdiction and territorial jurisdiction. The complaint should have relevant documents to prove negligence on the doctor’s side.

NEED FOR CONCRETE EVIDENCE:

Since the medical profession is usually regarded as a noble profession, the complainant has to provide concrete evidence against the medical practitioner in order to prove the breach of duty to care. Thus, the court considers the principle of *res ipsa loquitur* or “the thing speaks for itself”, as no proof of negligence is required than the accident itself.

¹ Referred from <http://nationalconsumerhelpline.in/medicalnegligence.aspx>

CODE OF MEDICAL ETHICS REGULATION 2002²:

This regulation states the code of etiquettes and moral to be followed by a registered medical practitioner.

Duties and Responsibilities of a Physician:

- He should maintain medical records.
- Every physician has to display their registration number.
- A physician is to prescribe the name of the drugs with their generic name.
- Every physician has to provide highest quality assurance in patient care.
- Every physician has an obligation to expose unethical conduct.
- A physician should announce his fees before rendering service and not after the operation or treatment is under way.³
- The physician shall observe the laws of the country in regulating the practice of medicine and shall also not assist others to evade such laws⁴.
- The physician has to maintain secrecy regarding the patient's health. No revelation is to be made until or unless it is made to protect a healthy person from a communicable disease.
- The physician should neither exaggerate nor minimize the gravity of a patient's condition.
- The physician has to avoid unnecessary consultations.

MISCONDUCT BY A PHYSICIAN⁵:

Adultery or Improper Conduct:

The misuse of power and position by a physician by committing adultery or improper conduct with a patient would make the physician liable for disciplinary action as provided under the Indian Medical Council Act, 1956 or the concerned State Medical Council Act.

Sex Determination Tests:

Unless there are other absolute indications for termination of pregnancy as specified in the Medical Termination of Pregnancy Act, 1971 is assessed, no termination of pregnancy is to be made. No sex determination tests are to be taken with an intention to terminate female fetus, an act done by a physician would result in criminal proceedings.

² <https://www.mciindia.org/ActivitiWebClient/rulesnregulations/codeofMedicalEthicsRegulations2002>

³ Referred 1.8 of Payment of professional services

<https://www.mciindia.org/ActivitiWebClient/rulesnregulations/codeofMedicalEthicsRegulations2002>

⁴ Referred 1.9 Evasion of legal restrictions.

<https://www.mciindia.org/ActivitiWebClient/rulesnregulations/codeofMedicalEthicsRegulations2002>

⁵ Refer chapter 7

<https://www.mciindia.org/ActivitiWebClient/rulesnregulations/codeofMedicalEthicsRegulations2002>

References

<http://www.nationalconsumerhelpline.in/medicalnegligence.aspx>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779962/>

Signing Professional Certificates, Reports and Other Documents:

Due care is to be taken while prescribing drugs to a patient. No physician can allow an unqualified person to perform abortion or surgery. If a procedure involves them becoming sterile, a consent has to be obtained from the man, woman or guardian in case of minor. If the patient is married both the consent of husband and wife is to be taken.

Research:

Clinical drug trials and other research involving patients are to be done in accordance with the ICMR guidelines. Violation of the guidelines constitutes misconducts.

Absenteeism:

If a medical practitioner posted in rural area or an institute is found absent on two occasions while an inspection is done amounts to misconduct.

Leaking of photographs:

No photographs or case reports are to be published by the medical practitioner without their permission/ consent.

Liability:

If a nursing home is run by a physician the ultimate responsibility lies in the hand of the physician.

Can't Claim to be a specialist:

A Physician shall not claim to be specialist unless he has a special qualification in that branch.

PROCEEDING IN ACCORDANCE WITH THE CONSUMER PROTECTION ACT 1986

One can file a case in the respective consumer forums/ commission either in case of getting relief or to appeal.

http://clap.nls.ac.in/?page_id=102