

M edico-Legal Talk

Medico-Legal Issues in Clinical Dental Practice

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The Concept of Medical Negligence in Clinical Dental Practice

Herewith, I extend my sincere thanks to the Administrator, the Editorial Board and the Publisher for publishing my article on "The Concept and Importance of Informed Consent" in medico-legal column in **January-February-2024** issue of this esteemed "Heal Talk" Journal of Clinical Dentistry. Now, I am happy to write and forward a next column in continuation on The Concept of Medical Negligence, subject of Medico-Legal issues in Clinical Dental Practice.

Introduction:

In first article (Heal Talk // Nov-Dec 2023 // Vol-16 // No-2 // Issue-92, Pg No-14-15) of this medico-legal column, readers have seen in brief, general idea about introduction of medico-legal issues. In second article (Heal Talk // Jan-Feb 2024 // Vol-16 // No-3 // Issue-93, Pg No-16-18) of this medico-legal column, we have seen concept and importance of informed consent. Thus the readers understood the subject law and health and also law and medicine. The earlier articles also touched to the various terminologies of laws, rules, regulations, guidelines which governs medico-legal issues in Clinical Dental Practice. Along with the above terminologies it is must to know and understand for each dental practitioner about the concept of Medical Negligence resulting in to doctor's liability in Dental profession.

The concept of "Medical Negligence":

In Indian Society because of growing awareness of patients rights and judicial activism there is increasing number of litigations concerning Medical Professions. Hence, Hospital administrations are now faced with increasing complaints concerning various aspects, such as

1. The adequacy of their facilities,
2. The competency requirements of their professionals, and
3. The appropriateness of their therapeutic and diagnostic approaches.

The recent surge in lawsuits primarily revolves around the responsibility of medical professionals or establishments seeking compensation for the suffering caused by medical negligence, compromised consent, and breach of confidentiality within the doctor-patient relationship. Thus, whenever there is damage to the patients and that damage is the result of negligence of the doctor in the course of treatment then the concerned doctor is held liable for punishment in the eyes of Law.

Jacob Mathew Vs State of Punjab and another:

According to view of the Hon'ble Supreme Court, in case of **Jacob Mathew Vs State of Punjab and another**. Any individual patient approaching to a skilled person like Dentist or any specialty would have a reasonable expectation under the duty of care and caution. But there could be no assurance of the result. No doctor would assure a full recovery in every case. At the relevant time, only assurance given by implication is that he possessed the requisite skills in the branch of the profession and while undertaking the performance of his task, he would exercise his skills to the best of his ability and with reasonable competence.

Thus, the Doctors liability would only come if (a) either a person (doctor) did not possess the requisite skills which he professed to have possessed; or (b) he did not exercise with reasonable competence in given case the skill which he did possess. It was held to be necessary for every professional to possess the highest level of expertise in that branch in which he practices. It was held

that simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of the medical professional.

Though doctors can provide their best medical assistance available at their command but merely because they could not treat the patient successfully or save the patient, that could not be considered to be a case of post operative medical negligence despite the fact that medical protocol administered by doctors was duly supported by the standard norms of the field.

What is Negligence?

In short, Negligence is the Breach of Legal Duty. Negligence is defined as the Breach of Legal Duty to take care and that is caused by the omission to do something which a reasonable man will do or guided by those considerations which ordinarily regulate the conduct of human affairs or would do or doing something which prudent and reasonable man would not do.

Negligence according to Halsbury Laws of England (Fourth Edition) para 34 and as settled in India by Hon'ble Supreme Court:

The term "Negligence" has been defined in Halsbury Laws of England (Fourth Edition) para 34 and as settled in India by Hon'ble Supreme Court in case of **Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others: Negligence: Duties owed to patient.** A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient."

Types of Negligence:

- A. Composite Negligence.
- B. Contributory Negligence.

A. What is Composite Negligence?

When the harm is done to the patients by the contribution of two or more persons and not contributed by the patient himself, it is said to be Composite Negligence. In this Composite Negligence the patient has a choice of proceeding against all or anyone or more than one of the wrong doers. E.g.: Endodontist, Oral Surgeon, Periodontist, Anaesthetist and so on all together or any one or more of them according to their individual liability for damages.

B. What is contributory Negligence?

Sometimes the alleged damage suffered by the patient or the negligent act of the treating doctor is related to some undesirable or negligent act of the patient himself. If the patient would have acted as per directions of the doctor then the doctor either would not have committed mistake or the damage would have not been caused to the patient. It means in short there is contribution of the patient in creating negligence.

The Components of Negligence:

There are following four components of Medical Negligence.

1. The person should **owe a duty to do something** for some other person or persons.
2. There should be a **breach of duty**.
3. There should be a damage done to that person due to breach of duty of standard care.
4. The harm should be an immediate cause of the breach of duty and not the remote one.

Ingredients of negligence to be proved:

Whenever the patients suffer for the damage and he wants to sue the doctor then, Ingredients of negligence to be proved by the complainant are:

- ☆ The Dentist has accepted the patient to treat on payment or partial payment or promise to pay or partially pay the monetary consideration or pay any kind or differed payment on conditions accepted by both the patient and Dentist except in cases of Emergency.
- ☆ Once the Dentist has accepted to treat, the Dentist Patients relationship is established and Dentist was duty bound to treat the Patient, except when the Patient was accepted due to emergency.
- ☆ The Dentist do not do his duty properly, as expected from the reasonable competent Dentist and in accordance with the prevailing standard of knowledge, care, skill and did not attend the patient or acted in the expected manner.
- ☆ Actual damage or harm suffered by the patient due to failure of doing his duty properly and in accordance with the prevailing standard of knowledge, care and skill.

Defenses available for Doctor:

- ☆ Defenses for Doctor against the charges of negligence are as given below:
- ☆ Doctor did not accept the patient to treat but treated in good faith due to emergency of the situation, so doctor patient relationship was not established.
- ☆ Doctor was not duty bound to treat the patient or he had no duty to treat the patient.

- ☆ Doctor discharged the duty properly as expected from reasonably competent doctor and in accordance with the prevailing standard of knowledge, care, skill and attended the patient or acted in the expected manner.
- ☆ The damage caused is not due to his negligent act, but was due to interference by the third person, who was also involved in the treatment of the patient with or without his knowledge and or permission and or consent.
- ☆ The damage caused is the result of taking some unavoidable risk taken in the good faith, in the interest of the patient, after taking informed consent from the patient and or parents and or relatives, guardian or attendant. Also proper care is taken to avoid the risk.
- ☆ It is the case of contributory negligence as patient did not follow doctors advice properly.
- ☆ Treatment by the doctor does not guaranty a cure and so harm done to the patient is a natural consequences of the disease of the patient.
- ☆ The damage done to the patient is the result of reasonable error of the judgement and / or therapeutic or diagnostic misadventure.
- ☆ Resjudicata: The complaint is already tried before a competent court so should not be entertained. No person can be tried twice for the same offence.
- ☆ The patient has persistently insisted on the specific line of treatment which has caused the damage in spite of warning by the doctor of the risk involved in the mode of the treatment.
- ☆ The patient has not paid the fees or the consideration agreed to be paid hence the contract of Doctor Patient relationship is not in existence and so he is not duty bound to treat him.

Precautionary measures:

Precautionary measures to avoid a charge of Medical Negligence are as given below.

- ☆ The registered Medical Practitioner should not guaranty the cure to his patient.
- ☆ Dentist should apply due care, knowledge and skill while treating the patient.
- ☆ Dentist should take written informed consent from the patient.
- ☆ Necessary clinical checkup and or laboratory investigations and premedication should be advised whenever necessary to diagnose or as a precautionary measure for surgical procedures for the prevention of the calculated risks of the patient.
- ☆ Consult the professional colleague if necessary for the treatment of the patient.
- ☆ Attention to be paid to the label of a medicine as to the date of manufacturer and expiry while giving to the patient.

- ☆ Sensitivity tests should be done before giving drugs or injections known to cause allergic reactions.
- ☆ No method should be tried beyond the skill or field of the concerned doctors.
- ☆ Anesthetists, Assistants and or paramedical staff should be selected with due care.
- ☆ Patient should not be left unattended especially during an emergency situation.

General Precautions for Female patients:

- ☆ Female patients should not be examined or treated without the presence of another female and or relative of the patients.

General Precautions for avoiding Negligence:

- ☆ The conditions of the instruments and all equipments should be in working.
- ☆ Instruments needed for surgical procedures should be properly sterilized.
- ☆ All labels on the bottles of the medicine should clearly mention name of the drugs.
- ☆ No advice should be given on phone or without examination unless in emergency.
- ☆ Give an optimum pre, post and after care to the patients.
- ☆ The capacity or knowledge of the professional colleagues should not be criticized.
- ☆ All records of treatment, investigations should be properly entered and kept.
- ☆ Police should be informed in cases of accidents, and or unnatural death.
- ☆ If Doctor is unable to attend the patient due to unavoidable circumstances then he should inform the patients and or his relatives. Also should arrange for competent replacement.

The Test of Negligence:

Medical and Dental Negligence have been tested in the Indian Courts but have not been adopted as benchmark. The Hon'ble Supreme Court in L. B. Joshi Vs T. B. Godbole and other described the test of standard as "The Medical Practitioner should bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor the very lowest degree of care and competence, judged in the light of the particular circumstance of each case is what the law requires."

The Bolam Test:

This Bolam test is a classical test widely used in United Kingdom. The Bolam test is an acceptable test used by the National Health Service of the U. K. when situation of negligence presents itself. The test is based on the case of:

Bolam Vs Friern Hospital Management committee (1957):

In this case Mc Nair J. held doctor, not guilty of negligence, in failing to administer relaxant drug prior to the treatment and or providing some form of manual restraint during passing of an electric current through the brain of the patient. He further held that in medical field, negligence means failure to act in accordance with the standards of reasonably competent medical man at that time. A man need not possess the highest skill while treating the patient. There may be one or more perfectly proper standards and if his act confirms, with one of these perfectly proper standards, then he is not guilty of negligence. Thus a doctor who acts in accordance with a standard practice accepted as proper by the responsible medical man and or body, is not negligent merely because there is a group of opinion that take a contrary view. Thus a doctor can only be held guilty of Medical negligence, when he falls short of the standard, reasonable medical care, skill and competence.

Conclusion:

Thus, the Medical negligence is the Breach of Legal Duty to take care, by doing something which prudent and reasonable man would not do or by the omission of doing something which a reasonable or prudent man will do. Hence, if the Dental professionals are not aware about his Legal Duty as per the standards of reasonable or prudent man, then the Dental Professionals may fail to perform his Duty in accordance with Standard norms. Means there will be breach in Legal Duty and as a consequence of breach in legal duty, the Dental Professional is liable for punishment under the Civil Laws, Criminal Laws, Statutory Laws or Consumer Protection Act-1986. Hence, the knowledge regarding Dental/ Medical Negligence should be an integral part of Dental professionals in order to prevent breach of legal duty and litigation free Dental Practice.