

How Medical Professionals Can Protect Themselves Against Litigations and Consumer Cases?

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“The important question isn’t how to keep bad physicians from harming patients; it’s how to keep good physicians from harming patients. Unfortunately, medical malpractice suits are a remarkably ineffective remedy. Fewer than 2 percent of the patients who had received substandard care ever filed suit. Conversely, only a small minority of patients who sued had been victims of negligent care. And a patient’s likelihood of winning a suit depended primarily on how poor the outcome was, regardless of whether that outcome was caused by disease or unavoidable care risks. The deeper problem with medical malpractice is that demonizing errors prevents doctors from acknowledging & discussing them publicly. The tort system makes adversaries of patient & physician, and pushes each other to offer a heavily slanted version of events.”

— **Dr. Atul Gawande, Complications: A Surgeon’s Notes on an Imperfect Science**

Medical professionals are now accountable to the public under the Consumer Protection Act (COPRA), 1986, which came into force in 1988. The act recognizes a consumer’s right to safety, information, choice, redressal, consumer education and to be heard. The inclusion of medical services under COPRA has evoked scathing criticism from medical professionals, which argues doctors will have to practice “Defensive Medicine” while treating/operating patients, and undertake multiple consultations. Medical professionals will also be forced to insure themselves heavily against malpractice suits.

Alarming Rise in Consumer Cases

India is witnessing an alarming rise in medical negligence cases filed in consumer courts against hospitals and medical professionals. According to published reports [1-4], there is a 110% rise in the number of medical negligence cases reported every year. The Majority of medical negligence cases filed in consumer courts involve with obstetrics and gynecology followed by cases related orthopedics, and other medical and surgical branches [1-4]. Heavy compensation was ordered in some of these cases. In a judgment given in October 2013 on medical negligence, the Supreme Court awarded compensation amounting to Rs. 11 Crore to a victim, which was to be paid by the doctors and the private hospital deemed responsible

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for the wrongful death of a patient. This landmark decision was by far the largest compensation award in the history of Indian medical negligence litigation. The National Consumer Disputes Redressal Commission (NCDRC), New Delhi, on August 26, 2022, awarded an exemplary compensation of Rs. 1 Crore to the parents of a 6-year-old child. The child was admitted for squint eye correction surgery and died while undergoing squint surgery at an Eye Hospital in Chennai. In July 2015, the Supreme Court ordered a compensation of Rs 1.7 Crore to a girl who lost vision soon after birth due to medical negligence by doctors of a government hospital in Tamil Nadu.

The medical profession is considered one of the noblest professions in the world. While Indian medical infrastructure is being noticed and praised on the global map, yet within the country, the doctor-patient relationship is deteriorating within the country, and the medical setup is facing extensive problems with medical litigation fast becoming one of the most serious of all issues. Medical professionals are no longer regarded as infallible and beyond questioning. We live in a culture in which displeased patients have increasingly turned to litigation to obtain redress from perceived deficiencies in the quality of care received from their treating physicians. Consumer cases are increasing not only for the medical branches dealing with life and death (emergency medical branches) or dealing with two lives (such as obstetrics and gynecology) but also doctors working in OPD/daycare set up like ophthalmology, dental surgery, dermatology, and diagnostic branches like radio-diagnosis, pathology are also increasingly facing consumer cases/litigations.

How to Minimize Consumer Cases & How to Safeguard Medical Professionals?

Despite the best possible care, best intentions, and best medical practices, some complications are bound to occur, and at these times, compassionate care, effective communication with the patients and attendants is the key to avoiding these complications from becoming lawsuits. While communicating with these patients, we must be honest, sympathetic, and not overly defensive. It helps to clearly admit that a problem has occurred rather than being evasive. However, the responsibility doesn't end with good communication, we need to do our best to ensure that the complications are handled well or referred to the right place at the right time. Support the patient at this time, by explaining to the attendants, helping to take the patients elsewhere, etc. The right attitude, compassion and communication at this crucial time can make a huge difference in the reaction of the

patients and avoid litigation despite unfavorable outcomes.

Timely referral to an expert is important for managing a difficult situation or any specific disease. Never criticize or disapprove of treatment or surgery done by your professional colleague in front of patients or relatives as it can provoke them to file malpractice lawsuits. The increased cost of healthcare service delivery has ultimately led patients to have higher expectations from medical care providers. Combined with the increased awareness and the availability of means to vocalize their grievances, patients can highlight negligence cases even for the smallest deficiency in the service.

The best way to handle consumer cases/medico-legal issues is by preventing them by 6 Cs: Checklist, Cost, Consent, Counseling, Complications Management, and Coverage by Insurance [3-7].

The WHO Surgical Safety Checklist is an often used example of a surgical checklist intended to ensure safe surgery and minimize complications. Train your entire team to follow the check-lists and protocols. Examine each and every patient very carefully. Ask for the previous medical records and never forget to take a complete history of systemic illness, drug allergy, previous surgery or trauma, etc.

It is important to counsel and explain to each and every patient about the surgery, cost, outcome after surgery, need for follow-up, and possible complications. The preoperative stage entails taking valid informed consent (video consent in all high-risk cases) of the patient for executing the proposed treatment, taking and recording the history of the patient, carrying out a proper examination, diagnosis, and investigations, pre-anesthetic check-up, detailed counseling, complete systemic investigations (and clearance for surgery) and then proceeding with treatment.

Always take the help of an anesthesiologist to monitor vital parameters after taking patients to the operation theater. The surgeon and entire team should be vigilant to minimize the complications encountered during the surgery in the operation theater, accidents, drug reactions, and mishaps experienced while operating, (for example surgery in the wrong patient/wrong eye/the wrong side, implanting the wrong prosthesis/IOL/implant), death during operation, and other similar incidents. Always document all operative notes, follow-up advice, detailed instructions about using the medications/eye drops, and communication about the postoperative complications etc. Several medical professionals use abbreviations and short forms instead of

detailed notes, which needs to be avoided, especially in patient instructions. Always explain the prognosis/complications/adverse outcomes in simple words using patient language. Writing about the treatment details/prognosis/outcome in the regional language on the discharge/follow-up records may be helpful so the patient (and his relatives) can read and understand clearly.

Coverage by Insurance (Professional Liability Insurance)

Medical professionals must cover themselves under professional liability insurance. One may use medical societies' help for bulk purchases and reduce the premium costs. A group of doctors can always negotiate better terms with the insurer than any individual. If the Insurance company is being changed, one should always insist on retroactive cover.

Training of Your Team

Periodical training/checking of your staff members and operation theater (OT) team must ensure they follow the checklist and protocols to minimize any error(s) when the patient is taken for surgery. Double-check the patient records, investigation reports, consent signed by the patient, site of operation, and medical records related to systemic illness, etc., before taking the patient to the operation theater. Always check the prosthesis/implant/intraocular lens type and its power, carefully inspect the irrigating solution for any floating particles, and cross-check the expiry date of drugs and devices. In ophthalmology, for example, train your entire OT team always to follow the practices to minimize postoperative endophthalmitis such as the application of adhesive drapes, pre-operative cleaning of the eye and peri-ocular area with 5% povidone-iodine solution, and instillation of one drop of povidone-iodine solution after completion of intraocular surgery.

Avoid unnecessary conversation (including jokes, irrelevant talk, scolding your staff, etc.) in the operation theater premises in the presence of a patient (or relatives) scheduled for any procedure or surgery. Exercising utmost care while performing any surgery under topical or local anesthesia is important as the patient actively listens to all conversations. It may (wrongly) correlate negligence in case of a lack of desired results.

Take Home Message:

The number of cases against medical professionals for malpractice is increasing because of increased internet awareness ('Dr. Google') among patients. While very few

cases may be legitimate and based on clinical negligence exercised by doctors, most medical professionals are wrongfully accused because of the lack of public understanding. Therefore, ophthalmic professionals must communicate empathetically, emphasize diligent service delivery, and maintain proper records of patient history, consent, and treatment. This practice will bring down the alleged incidents of malpractice and will protect medical professionals from fake lawsuits.

It is imperative to take substantial measures to ensure due diligence while performing surgical procedures, follow the provided guidelines, and take all necessary measures before performing any surgery in the hospital. Following surgical checklists, and protocols, proper documentation (maintaining medical records), taking informed consent, communication about the outcome of the procedure or treatment, timely referral of the patient (in case of any complication), and obtaining adequate professional liability insurance coverage are a few important tips to minimize the risk of litigation against medical professionals and medical professionals.

There is an urgent need to evaluate how India addresses medical negligence/errors. In addition to the fear of defensive medicine, increasing insurance premiums, and rising patient costs, it is time we are aware of the inequity that the present system perpetuates. Systemic deficiencies such as very heavy malpractice/litigation costs, delayed and protracted litigation, and dependence on judicial discretion do not provide effective justice to victims and could harm medical professionals and hospitals. In a developing country like India where there is an abysmally low investment in health, a paucity of trained human resources, a huge gap between urban and rural health care, and poor political/administrative will to improve the health sector, it would be wise to implement a no-fault liability system within the public health sector and also to have caps on the amount of compensation after carrying out due research and discussion. The government also needs to act and invest in health care (at least 5 percent of GDP) before it is too late.

India needs to overhaul the present system of addressing medical negligence using all of the above-mentioned solutions effectively. Medical professional bodies in India should ask the ministry of law to cap compensation for malpractice. It is time for the Indian Medical Association (IMA), and other medical societies to work together to ensure the safety of practicing medical professionals and hospitals.

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