

Should we treat medically or medico legally?



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The medical profession was considered as noble profession in the past. Now because of the increased litigation and medico legal issue it became a service providers like other professional services. The incidence of medico legal cases increasing at an alarming rate; almost 400 percent in the supreme court of India alone in the last decade due to covering of medical profession under consumer protection act.

This is because increased awareness of consumer production act and improper streamline of medical practice. This article intends to discuss rules and regulation related to medico legal cases along with various preventive measures.

Defensive medicine

Defensive medicine is defined as the ordering test and procedure (positive defensive medicine) or the avoidance of high risk patient or procedure (negative defensive medicine) primarily to reduce malpractice liability.

Negligence

Medical negligence is an act of commission or an act of omission, which a prudent doctor of average skill, knowledge and experience would not do.

Laws related to medico legal cases

- i. Most doctors are unaware of the existing legal provisions and confused about the arrest clause under the prevailing sections (15-20) of the IPC (Indian Penal Code), a doctor can be booked for medical negligence.
- ii. Under the most stringent section 304A, an FIR can be filed and the doctor arrested for the health of a patient.
- iii. Section 41 empowers a police inspector to even arrest a doctor without a warrant based on a complaint.
- iv. Criminal complaint are being filled against doctors alleging commission of offences punishable under section 304A or section 336/337/338 of Indian Penal Code, 1860 (IPC) alleging negligence on the part of the doctors resulting in loss of life or injury of varying degree of the patient.
- v. The IPC, 1860 list out a few rare exceptions. Section 88 in the chapter on general exceptions provides exemption for act not intended to cause death, done by consent in good faith for person benefit.
- vi. Section 92 provides for exemption for act done in good faith for the benefit of a person without his consent though the act cause harm to a person and that person has not consented to suffer such harm.
- vii. Section 93 saves from criminality contain communication made in good faith.

Reasons for medico legal litigations

- i. Analysis of most of the medico legal litigations proves that poor communication skill with the patient or poor explanation of difficulty situation was the most common cause of medico legal litigations [1].
- ii. Poor medico legal records. In court of law documents speaks more than the verbal expression of experts. So maintenance of proper medico legal records is very important.
- iii. Criticism of their own colleague. This will create lot of problems both for treating doctor and already



- treated doctor. Opinion of one disease can vary individually based on the clinical knowledge and specialty in which they are trained.
- iv. Improper training of medical graduates due to overseas education. In overseas they are so many medical colleges they never allow students to examine or do intervention on their patients. This leads to poor training of graduates.
 - v. Avoid unnecessary investigations. This will avoid lots of litigations. Nowadays delay in diagnosis always considered negligence and leads to medico legal issues [2].
 - vi. Malpractice against radio diagnosis. Never disclose the sex of the baby even patient insist on sex of baby. There are lots of litigations for disclosure of sex of baby.
 - vii. Diagnostic error. Error in diagnosis can occur both clinically or radio logically. In radiological investigations it should be documented that radiological investigations has its own limitation and it can't be used for medico legal purpose.
 - viii. Improper informed consent. Informed consent is consent of a patient or other recipient of services based on the principles of autonomy and privacy [3].

Prevention of medico legal cases

- i. Dangerously ill List (DIL) ideally should be obtained daily rather than at the time of admission. When patient improved it should be documented that patient was removed from DIL.
 - ii. Consent form should be obtained by medical staff rather than paramedical staff, because the consultant can explain the procedure and related issue very well manner compared to paramedical staff.
 - iii. The role of on table death consent in high risk patient controversial, but still needed to protect litigations. It should be obtained for the patient who has lot of co morbidities and liable for death during surgery or procedure.
 - iv. If consent obtained for one procedure do the procedure for which consent was obtained unless it was a life saving procedure. Court of law accepts a procedure which was done without consent in life saving procedure. Don't extend the procedure for which no consent was obtained. Oral consent on table is not valid consent for surgery [4].
 - v. Benefits and risk of each and every procedure should be explained to the patient and it should be documented. Informed consent should be available up to the worst complication of procedure. List should include both Pre and post procedural complications [5].
- vi. Consent should be obtained on their native language. Disclosure of patient details in social media should not be done unless formal informed consent was obtained from the patient regarding disclosure for academic interest [6].
 - vii. Operation theatre should have minimum mandatory operative standards. It is mandatory to check preoperative anesthesia machine, ventilator machine and perfusion machine before starting the procedure.
 - viii. All patients who are undergoing any procedure should have routine pre anesthetic and pre surgical check list. This will avoid wrong site marking, improper documentation of high risk conditions. Post surgery there should be check list related to anesthesia and surgery like drug used, number of pad and instrument check list. All pre and post anesthetic and surgical check list should be signed by anesthetist, surgeon and scrub nurse [7].
 - ix. Proper documentation of operative findings: this includes type of anesthesia, incision made, intra operative finds, complication encountered during intra operative period. Avoid over writing and excessive explanation related to the procedure. [8].
 - x. Don't do any untrained procedure because it is against medical ethics under Supreme Court. Whenever there is a difficult situation expert opinion it should be obtained.
 - xi. All medication should be prepared by treating doctor rather than paramedical staff because wrong administration of drug or dose will hold treating doctor responsible rather than paramedical staff.
 - xii. Preservation of medical records:
As per regulation 1.3.1 of Indian medical council, 2002, every doctor shall maintain the medical records pertaining to his or her inpatients for a period of 3 years from the date of commencement of the treatment. For medico legal cases records is to be preserved for a period of 10 years or even more. Whenever a request for medical records is made by legal authorities, it is to be duly acknowledged and documents shall be issued within a period of 72 hours as per regulation of MCI 1.3.2.
 - xiii. Professional indemnity insurance: Professional indemnity insurance cover become available for doctors and medical establishment only from December 1991.

Scope of policy

Bodily injury and or death of any patient caused by or alleged to have been caused by either omission or negligence in professional services.



Policy excludes

- a. Criminal acts,
- b. Acts committed under influence of intoxicants,
- c. Weight reduction procedure,
- d. Plastic surgery,
- e. HIV/AIDS,
- f. Radioactivity,
- g. Blood bands

Defenses for medico legal cases

- i. Always get good lawyer services and give timely reply. Never attempt to give reply without the help of lawyer.
- ii. Contributory negligence by the patient can be pleaded
- iii. Error of judgment in treatment can be pleaded.
- iv. Treatment started after well informed consent, explaining the side effect of the treatment and available options for the same disease.
- v. Doctors are not liable for their services individually or vicariously if they do not charge fees. Thus free treatment will not be considered a service as defined in section 2(1)(0) of consumer protection act, 1986.

Supreme Court rules to protect doctors

- i. A complaint cannot be entered unless the complaint has produced prima facie evidence before the court in the form of credible expert opinion of a competent doctor.
- ii. Doctor accused of negligence cannot be arrested in a routine manner. The Supreme Court further warned the police not to arrest or harass doctors unless the facts clearly otherwise the police will themselves have to face legal action.

Competing interests

None declared.

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