

DOCTOR & CONSUMER DISPUTES: PREVENTION AND MANAGEMENT



PRESENTED BY

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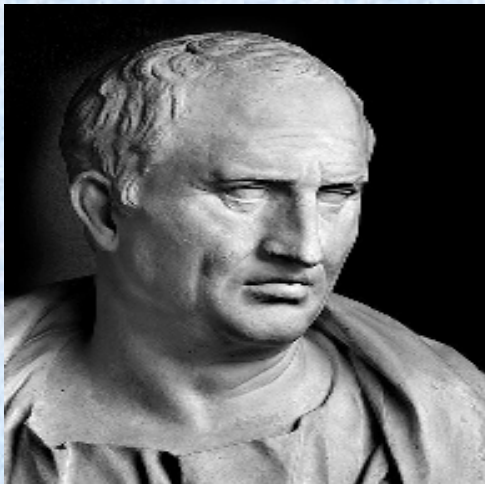
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MEDICAL PROFESSION & MANKIND



**“In nothing do men more
nearly approach the gods
than in giving health to
men.**

Cicero

OVERVIEW

- 1. CHANGES IN DOCTOR AND PATIENT'S RELATIONSHIP.**
- 2. DEFINITION OF NEGLIGENCE AND CONSTITUENTS OF NEGLIGENCE.**
- 3. ACTS HELD AS PROFESSIONAL NEGLIGENCE AND LIABILITY OF THE DOCTORS.**
- 4. REMEDIES ADOPTED BY CONSUMERS.**
- 5. CASES WHERE EXEMPLARY COMPENSATION HAS BEEN GRANTED TO THE CONSUMERS.**
- 6. HOW TO AVOID AND MANAGE CONSUMER CASES?**
- 7. HOW TO COUNTER LEGAL ISSUES?**

CHANGES IN DOCTOR –PATIENT'S RELATIONSHIP

- ❖ **The fast pace of commercialization and globalization on all spheres of life and the medical profession is no exception to these phenomena.**
- ❖ **Now relationship is more like a service provider and consumer.**
- ❖ **Major changes in relationship happened in last two decades and the doctor-patients relationship has deteriorated considerably.**
- ❖ **Indian society is experiencing a growing awareness regarding patient's rights.**

DEFINITION OF NEGLIGENCE:

- **“In the ordinary case which does not involve any special skill, negligence in law means a failure to do some act which a reasonable man in the circumstances would do, or the doing of some act which a reasonable man in the circumstances would not do; and if that failure or the doing of that act results in injury, then there is a cause of action.”**

-BOLAMS CASE [1957] 1 W.L.R. 582 = [1957] 2 All E.R. 118

WHAT ARE THE CONSTITUENTS OF MEDICAL NEGLIGENCE?

There are three constituents of negligence:

1. A legal duty to exercise due care in rendering medical services to the patient;
2. Breach in duty of care; and
3. Consequential damage or injury to the patient.

ACTS HELD AS PROFESSIONAL NEGLIGENCE:

1. MISDIAGNOSIS:

For Ex- Chest pain of heart diagnosed as strained chest muscle.

2. DELAYED DIAGNOSIS:

For Ex- detection of brain fever at later stage.

3. SURGICAL ERROR:

For Ex- Leaving foreign object in the body after operation.

4. FAILURE TO MONITOR PROGRESS:

For Ex.-weekly blood drawings to reduce excess iron content.

5. FAILURE TO TREAT IN A TIMELY MANNER:

6. ANESTHESIA ERROR:

7. MEDICATION OR PRESCRIPTION ERROR:

LIABILITY OF DOCTORS:

A doctors SHALL NOT BE held liable for medical negligence, If:

- 1. There has been error in judgment i.e. bonafide mistake.
John Oni Akerele v King AIR 1943**
- 2. Other doctor possessing better skill or knowledge would have or have prescribed a different treatment or operated in a different way.**
- 3. Something went wrong during the medical treatment or surgical operation despite reasonable care and skill.**
- 4. Prescribes medical treatment or operate a patient as per his judgment, skill and in the light of circumstances.**
- 5. Acted in accordance with the practice accepted as proper by a body of medical professionals.**



REMEDIES ADOPTED BY CONSUMERS

1. FILING OF CIVIL SUIT:

Before enactment of CPA, the cases used to be filed in civil court under the law of Torts. A person can still file the case in civil court for redressal of grievance.

2. FILING OF CONSUMER CASE:

A Consumer can file his case complaint with District Forum/State Commission/National Commission depending upon the compensation claimed. State Commission & National Commission also have appellate jurisdiction.

3. COMPLAINT WITH MCI/DCI:

Consumers can also submit their complaint with MCI/DCI to investigate the matter and initiate appropriate action.

4. CRIMINAL COMPLAINTS:

A doctor may also be held liable for criminal negligence under IPC(Sec 337, 338 and 304A).

A Doctors shall be liable for **criminal negligence only, if**

- (1) Evidence established beyond doubt about negligent and reckless acts;**
- (2) Gross deviation from standard practice;**
- (3) Patient has suffered injury or damage; and**
- (4) Supported by report of the experts.**

EXEMPLARY COMPENSATION GRANTED TO CONSUMERS UNDER CPA

1. IN ***DR. KUNAL SAHA VS. DR. SUKUMAR MUKHERJEE AND ORS. Original petition No. 240 of 1999 NCJ***

The National Commission awarded compensation of Rs. 1.73 crore to Dr. Kunal saha for medical negligence. An appeal has been filed in Supreme Court of India for enhancing the compensation.

2. IN ***NIZAM INSTITUTE OF MEDICAL SCIENCES V. PRASANTH S. DHANANKA CA Nos. 4119 of 1999 and 3126 of 2000, Supreme Court.***

The case was decided on 14 May 2009 and a compensation of Rs.1 Crore has been awarded to Mr. Prasanth.

HOW TO AVOID & MANAGE CONSMUER DISPUTES

1. PREVENTION THOROUGH PERSONAL & PROFESSIONAL INITIATIVES .
2. PREVENTION THOROUGH MANAGERIAL INITIATIVES.
3. PREVENTION THOROUGH PROFESSIONAL INDEMNITY.
4. PREVENTION BY TAKING SUPPORT OF CONSUMER ASSOCIATIONS OR CONSUMER ACTIVISTS.

PREVENTION THOROUGH PERSONAL & PROFESSIONAL INITIATIVES

A. KEY PRELIMINARY PRECAUTIONS :

- 1. Signboards and Advertisements should mention actual facilities available in hospital and nursing home.**
- 2. Mention qualification, training, experience and designation on prescription slip;**
- 3. Date and time of consultation;**
- 4. Mention age, sex and weight of patient;**
- 5. Listen attentively, look carefully and ask questions;**
- 6. Refrain from making any claim or guarantee of results;**

B PRECAUTIONS AT DIAGNOSTIC STAGE:

- 1. Mention clearly about condition of patient;**
- 2. Record history of drug allergy;**
- 3. Describe the name of drug and dosage;**
- 4. If the drug is poisonous warning should be written;**
- 5. Give instructions in comprehensive terms;**
- 6. Mention side-effects if any and action to be taken on occurrence;**
- 7. Remember to advise in writing pathological, radiological tests at specific intervals for certain drugs which require monitoring;**


8. Where failure to follow instruction, refusal for any investigation and failure to come for reviews on specific dates, should always be recorded;
9. Make good clinical notes of findings on examination and treatment given;
10. Mention prognosis explained, if necessary take signature of patient/ attendant;
11. Always take a legally valid consent before undertaking surgical/diagnostic procedure; and
12. Make sure handwriting is legible.

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For _____
Address _____
Date OCT 17/02

R

re: BEUCE TROUE
THIS PATIENT USES
MARIJUANA AS A
MUSCLE RELAXANT
FOR MEDICAL REASONS.



PREVENTION THOROUGH MANAGERIAL INITIATIVES

- 1. Comply all applicable laws, such as related to health & hygiene, fire safety and disposing off hospital waste etc;**
- 2. Employ trained and qualified staff;**
- 3. Impart training to staff about dealing with patients/relatives under stress;**
- 4. Always update yourself and staff with management & academic sessions, workshops and programmes.**

- 5. Always ask patients/relatives for feed back on your services, staff behavior, charges as well as hospital set up.**
- 6. Maintain proper records and documents as per applicable laws or at least for one year after completion of treatment.**

PREVENTION BY PROFESSIONAL INDEMNITY

Professional indemnity is a tool which not only meets the claim of compensation awarded against the doctor or hospital but also gives security if negligence is proved in a Court of law;

Take adequate insurance cover from reputed insurance company to cover:

- **Compensation awarded by any court/tribunal**
- **Loss of Profit; and**
- **Loss of reputation/goodwill**

PREVENTION THOROUGH SUPPORT OF CONSUMER ASSOCIATIONS/CONSUMER ACTIVISTS

- 1. Take help of Consumer Welfare Associations to dispel pressure group or vested parties to claim money from the doctors;**
- 2. Engage consumer activist to fight fraudulent claims;**
- 3. Hold seminar and deliberate on various provisions of the Acts, latest cases contested and judicial decisions;**
- 4. Engagement of Consumer Welfare Associations /consumer activists will deter unscrupulous consumers intending to initiate fraudulent claims.**

HOW TO CONTER LEGAL ISSUES?

- 1. Do not panic on receipt of legal notice;**
- 2. Read the legal notice carefully and understand the claims alleged;**
- 3. Verify the services you or your hospital has provided with respect to the alleged claims;**
- 4. Review documents and files of the patient;**
- 5. Assess the veracity of the claims;**
- 6. Notify your insurance company about the legal notice;**
- 7. Consult reputed lawyer with all documents and seek legal advise;**

8. Respond suitably to the legal notice;
9. If case the proceeding is initiated at District Forum/State Commission/National Commission, engage good lawyer to represent your case;
10. **Always** read the response of your legal counsel and discuss with him before submission to District Forum /State Commission /National Commission;
11. **Always** discuss one day before the hearing date with your legal counsel and seek up-dation on the case and also about the lawyer appointed to represent the case;
12. Try to attend the hearing at District Forum/State Commission/National Commission; and
13. Seek written report after hearing of the case.

**OVER RELIANCE OFTEN LEADS TO
INCONSISTENCY
&
INCONSISTENCY IS ALWAYS RISKY**



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