

Medicolegal Case Scenerios in Dental Practice - A Review of Literature

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ABSTRACT

People are aware about their rights nowadays and also about the laws of consumer protection. The medical profession is considered as a noble profession as it helps in preserving and saving life. The health care professionals are expected to provide treatment with all the knowledge and skill. Also they are expected not to do any harm to the patient due to their carelessness or negligence. Trust and confidence forms the base for doctor patient relationship. In the current era there is increased universal accessibility to information and this in turn raised a lot of legal concerns. Hence the health care professionals should be aware of their rights, duties and also about the medico- legal problems.

Key words: Negligence, medico-legal issue, consumer protection.

INTRODUCTION

Awareness about medical and dental negligence among public is growing in India. With this changing scenario, health care professionals have to adapt to the situation and may have to face such legal tangles, which is intangible and disturbing sometimes. Dentists are increasingly facing legal challenges from the patients who are not satisfied by the treatment provided. It is mandatory that all health care professionals including dentists should be aware of the medico legal aspects of the field.¹

What is negligence?

The word negligence has been defined as lack of proper care and attention; culpable carelessness and is derived from Latin word *neglego* or *neglect*.² Neglect has been described as fail to care for or to do; overlook the need to; not

pay attention to; disregard. There is also opinion that it is not possible to describe negligence in a dictionary form. It has been held by the courts that in a particular situation, a particular act - which falls short of being described as a reasonable act in that particular circumstance - may be called a negligent act.²

According to supreme court of India for an act to be considered negligent, the following aspects³

1. Dentist owed a certain standard of care- duty
2. Dentist did not maintain that standard- breach
3. There was an injury resulting from the lack of care - causation
4. There should be a connection (proximity) between the negligent act and the resultant injury-damages.³

The Supreme Court also believes that in context of the health profession negligence have to be viewed in a different angle. Additional considerations have to be applied to infer negligence on the part of professionals, in particular health care professionals like doctor or dentist. Professional negligence is different from occupational negligence. A simple lack of care, an error of judgment, or an accident, is not proof of negligence on part of the health professional. If a health care professional follows a practice acceptable to the profession of that day in the region, she/he cannot be held liable for negligence simply because another alternative course or method of treatment was also available.²

When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of professionals has found to be sufficient; a failure to use special or extraordinary precautions, which might have prevented the particular mishap, cannot be the standard for judging the alleged negligence. A professional may be held liable for negligence on one of the two findings: either she/he was not possessed of the requisite skill which she/he professed to have possessed, or, she/he did not exercise, with reasonable competence in the given case, the skill which she/he possessed.²

NON-Negligent acts⁴

1. Not obtaining a consent form in an emergency is not negligent.
2. Patient's dissatisfaction with the progress of treatment cannot be called negligence.
3. Not getting desired relief is not negligence.
4. Charging, what the patient thinks is exorbitant is not negligence.
5. When patient does not follow advice of the doctor and does not get satisfactory results, dentist cannot be held negligent

Who is liable? ²

Dentists with independent practice rendering only paid services.

Private hospitals charging all patients

All hospitals having free as well as paying patients; they are liable to both.

Doctors/hospitals paid by an insurance firm for treatment of a client or an employer for the treatment of an employee.

Who is not liable? ³

Dentist in hospitals which do not charge of their patient. Hospitals offering free services to all patients.

What are the liabilities a doctor can face? ⁵

Tortious liability: Liability incurred when one party owed a duty to another and failed to reasonably exercise a duty

Case 1: Dentist to compensate for the removal of the wrong tooth⁵

A patient named Poonam Devi had visited Ashima Kohli private dental clinic in June 2009 as she suffered from pain in the lower jaw. It has been diagnosed by Ashima Kohli that the seventh tooth was causing pain to the patient and it has to be extracted. Pain was not relieved even after the extraction of the tooth. The patient therefore visited a government doctor who diagnosed the problem to be with the sixth tooth. The patient approached the previous dentist, Kohli but she refused to meet and hence complaint was filed with the consumer forum. Medical reports have been referred to Postgraduate Institute of Medical Education And Research. A special team of senior doctors went through the medical reports and decision was given in favour of the patient Devi. Consumer dispute forum directed the dentist to pay Rs. 57,200 as compensation to the patient. It was found that the dentist was liable under Tortious liability in this case.

Vicariously liability

In this type, the liability arises when the law holds one person responsible for the harmful acts of another, even if the person has nothing to do with the commission of tort.

Case 2: (Disfigurement of teeth⁵

Case was filed on Oct 8th 2008 by a lecturer, MsAnitha, against a dentist Karthik Reddy, Sravani Super Speciality Dental Hospital in Hyderabad. ⁵ She had gone to the hospital for treatment of her tooth and RCT was done on her tooth which was also ground beyond requirement,

her tooth structure was damaged permanently and caused her a lot of discomfort and pain. The doctor consulted for this case was from Government Dental College, Hyderabad. The hospital has been directed by the State Commission to pay Rupees five lakhs as compensation for disfigurement of her tooth. It also directed the hospital to pay Rupees 10,000 towards cost of complaint and appeal. In this case, the hospital and the doctor have been held liable by the forum and therefore considered as a case of tortious liability against the dentist and vicarious liability against the hospital.

Res ipsa loquitur

Latin meaning- the thing speaks for itself. This particular phrase is used when it is obvious that the negligent act of the defendant has caused the damage alleged.

Case 3: Detachment of needle from syringe and slippage into throat⁵

An extraction of the right molar of the lower jaw was suggested by a dentist. There was some amount of bleeding after extraction and the dentist thought it would be necessary to irrigate the socket. While irrigating the socket, the needle got detached from the syringe and slipped into the throat. The needle could not be retrieved and further it got slipped down into the stomach and hence an operation was needed to remove the needle. The court held that as the dentist did not properly set the needle in the syringe the needle getting detached from the syringe and such an act is considered as negligence because the doctor was expected to take all possible care and caution. It is an example case of Res ipsa loquitur (thing speak for itself). The commission awarded compensation of rupees 1, 03,200 /- to the patient.

Statutory liability⁴

It depends on infringement of certain statutory duties that a clinical establishment has to provide towards the patient and staff. Ex: Running a dental practice without a proper license

Contributory liability⁴

Means the failure by a person to use reasonable care for the safety of himself or herself so that he or she becomes blame worthy In part as an offender.

CASE 4 Surgical procedures of a diabetic patient without the proper blood test

Dr Vaneet Khakar had not checked his blood sugar prior to the dental surgery and he had been complained by the patient, Fetah Singh. He informed the doctor that he has been a known diabetic. The patient told that his sugar level was normal and the dentist performed the treatment without getting the report of blood sugar level. The operated area developed pus due to his high sugar level, which infected patient's throat for which he required surgery costing about rupees 70,000 /-. The North District Consumer Disputes redressal forum held that Dr. Vaneet Kakar was negligent for not getting the blood sugar level of the patient checked despite having been informed by him that he was a known diabetic. It is the duty of the doctor to ask the patient to go for blood sugar test if the patient is known diabetic. There is dereliction on the part of the complainant this does not absolve the opposite party of his negligence.

Criminal liability⁴

When the medical man exhibits a gross lack of competence or in action

The following are the important offences that invite criminal liability with regard to negligence.

- Section 304A Indian Penal Code (Sec 304 A IPC) – Negligent homicide. This includes a rash or negligent act that results in death, e.g. death on the dental chair.
- Sec 336 (IPC) – this implies to any act endangering the life of a person (even if there is no injury), e.g. performing dental surgery without antibiotic prophylaxis for a patient who has valvular heart disease (even if the patient does not develop endocarditis).
- Sec 337 (IPC) – This includes any negligent act causing simple injury, e.g. swelling after negligent extraction.
- Sec 338 (IPC) - Any negligent act resulting in grievous injury, e.g. jaw fracture due to improper force during extraction.⁴

Essentials for avoiding legal hassles by a doctor⁶

1. Only the written records prove health care professionals innocence when something goes wrong.
2. Good communication: All information must

- be explained in comprehensible non-medical terms, preferably in patient's local languages about the diagnosis, nature of treatment, risk involved, prospects of success, prognosis if the procedure is not performed and alternative methods of treatment.
3. Never forget to take the appropriate type of consent whenever indicated. Take informed consent if any invasive dental procedure and/or local anesthetic agent is being used; preferably in the local language or in the language patient can read.
 4. Know your job; professional knowledge and skills continuously. Act in good faith.
 5. Maintain proper records of your professional work for a minimum of 3 years (for adult patients), for child patient (18+3) years
 6. When a patient refuses to consent for a treatment which the doctor feels necessary, an informed refusal of the consent must be taken in written format from the patient, in the presence of some independent witness and to be authenticated. The refusal consent should be obtained after fully explaining to the patient/ relatives the risk and consequences of refusal of procedure.
 7. Never guarantee a result.
 8. Respect the patient, treat the patient like you would want yourself treated.
 9. Act within the legal limits. The laws, rules and regulation of our profession should be known and not to be violated.
 10. Have a professional indemnity insurance of appropriate value and ensure its timely renewal.
 11. Know the legal provisions in favour of medical profession. Defamation is dealt by

IPC Section and it can be used to counter malicious charges by patients intending to spoil the good name of the doctor.

12. The code of conduct and Dental ethics in letter and in spirit to be followed.
13. Should not do any harm to your patient.
14. Maintain confidentiality.

CONCLUSION

Mistakes are common in every profession, as it occur in life. It is the duty of the individual to avoid errors and foresee the potential for mistake but, on occasions, it may become unavoidable. Unfortunately, in the health profession mistakes could result in serious consequences for the patient and, in turn, lead to the doctor/dentist being made answerable.³ Medical negligence occurs when a physician, hospital, pharmacist, or any other health care professional fails to perform the expected duties of their respective jobs.⁷

It is the duty of the dentist to warn the patient about possible risks in the treatment procedure. Following careful examination, the dentist should decide the treatment to be adopted. It may not be wise for a health practitioner to state that they will perform a cure with the highest possible degree of skill. While taking decisions, courts consider whether the health practitioner in question has undertaken the procedure with a fair, reasonable, and competent degree of skill. Supreme Court states that doctor profession is the noblest of all, and that there is a need to protect them from frivolous prosecution, it is implicit that doctors/dentists must be aware of the continued goodwill towards them in society, and that it is their duty to practice in the best interest of the patient, upholding concepts of righteousness and service³.

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