

ROLE OF CONSUMER PROTECTION ACT IN MEDICAL PRACTISE

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ABSTRACT

With the fast pace of commercialization and globalization on all spheres of life, the medical profession is no exception. Since the passing of the Consumer Protection Act in 1986, Consumer Protection Act has always been a strong tool for consumers in fighting the menace of any service available to them. The Act is a milestone in the history of socio-economic legislation to meet the long felt necessity of protecting the common man from wrongs for which the remedy under the common law for various reasons has become illusory. Medical services is as important as any other service for consumers and like other services, consumers have been facing hardships in this area also. The doctor-patient's relationship has deteriorated significantly and litigation against doctors is increasing day by day. This article helps in enlightening medical practitioner regarding CPA and how to prevent litigations.

Keywords: Consumer protection act, negligence, Complainant, Consumer, service.

INTRODUCTION

The service of doctors and other medical professionals is virtuous and dignified. The saying *vidyo narayano harihi* means doctors are equivalent to lord Vishnu. Every medical professional starts his service in the medical profession after taking the Hippocratic Oath. The Hippocratic Oath which starts with "I swear by Apollo physician" necessitates a physician to swear upon the gods that he will abide by the ethical standards in medicine. There are six ethical principles that have to be followed by the medical professionals. They are autonomy, beneficence which means doing good, nonmalficience which means not doing any harm, justice, telling the truth and remain- ing faithful. But now a day these principles are

not followed leading to a breach of duty which results in negligence. ^[1]

With the increasing commercialization of all spheres of life, all the professions have come under the public scrutiny. Earlier the role and the service provided by the medical professional were considered noble and charitable. But today with the increase in medical negligence and malpractices this profession is looked upon with doubt and contempt. The deterioration in the standard of patient care is considered to be due to interest in the monetary gains. And more ever patients have become more aware of their rights and there have been increase in the number of complaints against doctors in the consumer forums

which are available in our country for redressal of their grievances. All these have soured the patient-doctor relationship to great extent.^[2]

The Consumer Protection Act was passed in 24th December, 1986 for the better protection of the interest of consumers and to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer's dispute and for matters connected therewith.^[3-6]

Till 1995, even courts were not clear whether doctors are covered under consumer protection act or not. In a landmark case in 1995, the Supreme Court decision in *Indian Medical Association vs VP Shantha*,^[7] medical profession has been brought under the Section 2(1) (o) of Consumer Protection Act, 1986 and also, it has included the following categories of doctors/hospitals under this Section:

1. All medical/dental practitioners doing independent medical/dental practice unless rendering only free service.
2. Private hospitals charging all patients.
3. All hospitals having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals.
4. Medical/dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee.

The medical profession has also been included within the ambit of a 'service' as defined in the Consumer Protection Act; 1986. This defined the relationship between patients and medical professionals as contractual and not a master servant relationship as argued by the medical professionals. Patients who had sustained injuries in the course of treatment can

now sue doctors in consumer protection courts for compensation.^[8]

CONSUMER PROTECTION ACT

Consumer protection law in India was statutorily codified by the Parliament as the Consumer Protection Act, 1986, referred to henceforth as the Act. The Act was a result of the longstanding demand among consumers to cure the lacuna in the present Indian law and provide better protection to them. The advent of the concept of the medical negligence under the Act has been largely due to judicial pronouncements.^[9] The section 2(1)(d)(ii) of the Act defines "consumer" as a person who hires or avails of any services for a consideration, while section 2(1)(o) defines "service" to mean service of any description which is made available to potential users. There is no explicit reference to service by medical practitioners to be included under the realm of service under section 2(1) (o). It was initially thought that medical services are not under the ambit of the Act. This controversy was put to rest by the apex court in *Indian Medical Association v V. P. Shantha*.^[10]

Here is one example regarding this act that is the plaintiff's husband died due to negligence of the doctors. The treatment was done in a government hospital and no fees were charged. Therefore, no compensation could be paid, as government hospitals and other honorary authorities which render their service free of charge did not fall under the purview of the Consumer Protection Act. The case was dismissed and subsequently the plaintiff filed an appeal to the Supreme Court of India. The apex court in this landmark case, lifted the veil of "consideration" needed under the section 2(1) (o) of the Act and held the medical profession to be under the ambit of section 2(1)

(o) of the Consumer Protection Act, 1986. It only excluded the medical enterprises which render services free of cost.^[11] As a consequence of this judgment, virtually all the government and private hospitals are now under the scope of consumer protection law. In a subsequent decision the apex court also held

that when a child was taken to a hospital by his parents and the child was treated by a doctor, the parents would come within the definition of consumers having hired the services of the hospital and the child would be considered a consumer under the under the section 2(1) (d) of the Act.^[12]

Structure of consumer forum/Commissions and their jurisdictions^[13]

National Commission	Original jurisdiction over Rupees 1 Cores
State commission	Original jurisdiction over Rupees 20 lacks to 1 Cores
District forum	Original jurisdiction up to Rupees 20 lacks

Procedure^[14]

Complaint can be done by self or through agent, personally or by post. Avery nominal court fee is to be paid. No advocate is required. Of the complaint 4 copies have to be submitted [3 for court and 1 for the opposite party]. The complaint should include-

- a) Name and address of the party making the complaint.
- b) Name and address of the party complained of.
- c) Text of complaint.
- d) Any proof supporting the complaint.
- e) Relief sought.
- f) Signature.

The case has to be decided within 90 days. The appeal can be made within 30 days by either party to the next higher forum. [Against the action of national forum, appeal can be made to the Supreme Court].

WHAT IS MEDICAL NEGLIGENCE?

Negligence is defined in the law of torts. It can be defined as failure to exercise the care that a reasonably prudent person would exercise in like circumstances. Health professionals owe duties to their patients according to accepted standards of care and, in the absence of a conscience clause, cannot simply refuse to treat or counsel their patients

without exposure to liability for abandonment or malpractice. Medical professionals have a duty of care to conform to the generally recognized and accepted practices in their profession. If a doctor fails to provide a treatment in specific circumstances where the standards of care call for it, he could be held civilly liable for malpractice.^[15]

In *Calcutta Medical Research Institute v. Bimalesh Chatterjee*.^[16] it was held that the onus of proving negligence and the resultant deficiency in service was clearly on the complainant A doctor cannot be held criminally responsible for a patient's death unless it is shown that she/ he was negligent or incompetent, with such disregard for the life and safety of his patient that it amounted to a crime against the State as held in House of Lords decision in *R v. Adomako*.^[17]

In the case of *Dr Laxman Balkrishna Joshi v. Dr Trimbak Bapu Godbole*^[18], the Supreme Court held that if a doctor has adopted a practice that is considered "proper" by a reasonable body of medical professionals who are skilled in that particular field, he or she will not be held negligent only because something went wrong.

Types of Negligence^[19]

Depending upon the court to which the case of professional negligence is taken, professional negligence is of two types.

1] Civil professional negligence

It refer to negligence of doctor when patient or his relative take the case of civil court demanding compensation for the damage caused to the patient . e.g.

A) Failure in regard to contractual obligations

The doctor patient relationship puts an obligation on the doctor that he will-

- Continue treating the patient, with his consent till hi is all right or refuse treatment or dies.
- Using maximum care, skill and knowledge.
- Allowing second opinion whenever indicated.
- Maintain professional secrecy.

B) Investigation

- Not ordering proper investigation.
- Unnecessary investigations.
- Not taking biopsy when indicated.
- Not taking x-ray in suspected bone injury cases and not using ophthalmoscope in raised intracranial tension is ipsofacto [in itself] evidence of negligence.

C) Diagnosis

- Wrong diagnosis.
- Wrong interpretation of investigation

D) Treatment

- Unnecessary treatment.
- Prolonged treatment.
- Delayed treatment.
- Treatment leading to further complications.

E) Operation without consent.

F) Issuing wrong certificates or reports.

2] Criminal professional negligence

It refer to professional negligence for which, the patient or his relative alleging gross negligence on the part of doctor, take the case of

professional negligence to criminal court, demanding punishment to doctor.

The case of usually tried by JMFC, usually under **section 304 A of IPC**, and the punishment is imprisonment up to 2 year or fine or both [it is a bailable offence]

[There is also provision under section 336, 337 and 338 of IPC to charge the doctor for professional]

Do's for Doctors ^[20]

- Mention your qualifications/ training/ experience/ designation on the prescription. Qualifications mean recognized degrees/ diplomas as regulated by the Indian Medical Degrees Act, 1916 as amended from time to time. Mention of scholarships/ membership/ awards which are no qualifications should be avoided.
- Always mention date and timing of the consultation.
- Mention age and sex of the patient. In a pediatric prescription weight of the patient must also be mentioned.
- Always put your hand on the part that the patient/ attendant say is painful. Apply your stethoscope on him, even if for cosmetic reasons.
- Listen attentively. Look carefully. Ask questions intelligently.
- If, after completing the examination, the patient/ attendant feels that something has been left out or wants something to be examined, oblige him.
- Always face the patient. Do not stare. Some patients tolerate very little eye contact. Learn to observe out of the corner of our eyes.
- In case you have been distracted/ inattentive during the history taking, ask the patient/ attendant to start all over again. He will never mind it. As far as possible consultations should not be interrupted for non-urgent calls.

- Ask the patient to come back for review the next day, in case you have examined him hurriedly or if you are not sure about the diagnosis/ treatment.
 - Mention “diagnosis under review” until the diagnosis is finally settled.
 - In complicated cases record precisely history of illness and substantial physical findings about the patient on your prescription.
 - If the patient/ attendants are erring on any count (history not reliable, refusing investigations, refusing admission) make a note of it or seek written refusal preferably in local language with proper witness.
 - Mention the condition of patient in specific/objective terms. Avoid vague/ non-specific terminology.
 - Record history of drug allergy and write names of drugs clearly.
 - Use correct dosages (by revising knowledge periodically) and mention clearly method and interval of administration. Here one must use local or sign language.
 - Do not forget writing precautions like Ast./ p.c./ a.c./ locally/ with milk/ h.s. etc. in local language.
 - If a drug is a poison (e.g., certain local applications), warn in writing.
 - Give instruction to the patient in comprehensible terms, making sure that the patient understands both the instruction and the importance of strictly adhering to them, e.g., while prescribing to potent anti-inflammatory drug, warn that if he experiences any stomach trouble he should stop taking the drug and consult a doctor immediately.
 - Mention likely side-effects, and action to be taken if they occur.
 - Prescribe with caution during pregnancy/ lactation.
 - Adjust doses in case of a child/ elderly patient and in renal or hepatic disorders.
 - In case of chronic ailments, mention treatment to be taken immediately in case of an emergency. For example, a patient on anti-epileptic treatment should be advised to take an injection of diazepam when convulsions occur.
 - In case of any deviation from standard care, mention reasons.
 - Develop a lot of physicians you trust and respect in each of the specialties. Nurture your relationship with them, and consult them about difficult cases.
 - Whenever referring a patient, provide him with a referring note.
 - Update your knowledge and skill from time to time. Update not only your own knowledge and skill, but also that of your staff.
 - Preferably employ qualified assistants. If not available, impart proper training and skill at your or some appropriate centre and obtain a certificate for the same.
 - Always obtain a legally valid consent before undertaking surgical/ diagnostic procedure. Learn the difference between “informed persuasion” and “informed consent”. The first is legally wrong; through at times it may be medically correct. (For details on consent, see under “Preventive Steps Against Litigation” in “Medical profession and Consumer Protection Act”, 1994 edn.) In case of MTP/ Sterilization, always follow the guidelines issued by the Government of India
- While administering an injection/vaccination always check:
- Name of the injection (a wrong injection may be given by mistake or oversight);
 - Expiry date;
 - Reconfirm the route of administration;

- If it is to be diluted, check the dilution factor (1:2, 1:4 etc.);
- Rate of administration (fast, slow, in drip, etc.);
- Site of infection, e.g. antero-lateral, thigh, if age 1 year, gluteal region, deltoid, etc.;
- That a disposable syringe and needle are used. If that is not possible, use syringe and needle after proper sterilization.
- Routinely advice X-rays in injury to bones and joints and related diseases of bones/joints.
- Always seek proper legal and medical advice before filing reply to the complainant referred to you from a consumer court.

Don'ts for Doctors ^[21]

- Don't prescribe without examining the patient; even if he is a close friend or relative (Telephone advice is an exception).
- Never examine a female patient without presence of female nurse/ attendant, especially during genital and breast examinations.
- Don't insist on the patient to tell the history of illness or be examined in presence of others. He has right to privacy and confidentiality.
- Do not permit considerations of religion, nationality, race, party, politics or social standing to intervene between you and your patient.
- Don't be overconfident. Don't look overconfident.
- Don't prescribe a drug or indulge in a procedure of you cannot justify its indication.
- Don't prescribe/ administer a drug which is banned.
- Don't over-prescribe/ administer: too much of the drug, too large a dose, for too long.
- Don't prescribe multiple drugs. Such prescription may be due to inability to form a correct diagnosis or other causes. Possibilities of drug interactions increase with poly pharmacy.
- Don't write instructions on a separate slip. Don't allow substitutions.
- Don't adopt experimental method in treatment. If there is some rationale do it only after informed consent.
- Don't give a drug parent rally if it can be given orally. There may be some exceptions.
- When you are not sure what and why to do. Consult your senior/ specialist/ colleague.
- Don't refuse if the patient/ attendants want to leave against medical advice. It is their right. Document this properly.
- Never order an investigation unless the result is likely to help you direct the treatment or make a difference in what you tell a patient.
- Don't leave at the moment of death. There is a tendency especially on the part of senior doctors to go away at this time when his presence and experience are most needed.
- Don't hesitate to extend your condolences and sympathies to the bereaved persons. Don't forget to provide genetic counseling to couples and parents with known family history/ children having genetic abnormalities, e.g., Thalassemia, Hemophilia, etc.
- Don't issue death certificates unless you have yourself verified.
- Don't divulge secrets you come to know during discharge of your professional duties. There are five exceptions to this general principle.

- Don't deny medical care to a patient with HIV infection/ AIDS. Observe all necessary precautions.
- Don't inform that the person is infected with HIV unless confirmatory test results are received. Don't give untrue, misleading or improper reports, documents, etc.
- Don't refuse the patient's right to examine and receive an explanation about your bill regardless of the source of payment; whether or not it is reimbursed by the government or by his employer/ insurance company.
- Don't refuse the patient's right to know about the hospital rules and regulations.

CONCLUSION

Medical practitioners of our country are hardly taught about the rights of a patient in their medical curriculum. It is now high time that they must gain adequate knowledge about the rights of patient so that they do not violate them even unknowingly during their practice. The number of medical negligence lawsuits is increasing day by day in India, and the threat of litigation has increased significantly after the Supreme Court brought Medical Profession under the purview of the Consumer Protection Act, 1986.

The people are now confident enough while visiting doctors and getting treated and can rely on consumer forums to get fast redressal in case of any deficiency in service. The doctors also treat the patients with greater care and caution than they earlier used to because of the existence of this law. But in the cases of medical negligence, it is seen that a very huge burden of proof is imposed on the aggrieved patients to prove negligence. This is a major setback of the law as it is obvious that the hospital authorities and doctors will not be quite open about the mistake on their part.

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