

Medical malpractice and negligence – Rational and irrational drug therapy

Introduction

- As long as the medical professionals can prove to the court that they discharged their duty of care legally well they should not really have anything to worry about
- To be able to fight a false claim or to avoid a potential case of negligence (caused unconsciously), medical professionals need to be sufficiently armed with legal knowledge concerning their profession
- The reason for the rise in number of medical negligence cases was the association of the medical sector with business and concepts of profit making

What is medical negligence

- A Medical practitioner is said to have committed MN , when a medical practitioner breaches(breaking) the duty of care that he has towards his patient either by committing or omitting to do an act that is not in consonance(accordance) with the standard legal practice of the medical community, thereby causing legal injury to the latter (patient)
- There are 4 essential components that are usually required to be satisfied by the patient to move successfully against the defendant(accused) medical practitioner

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- The essential elements that need to be established are
 - ✓ A duty of care towards the concerned patient
 - ✓ The breach of such duty of care
 - ✓ Proof of legal injury that is suffered by the complainant (a person who makes a formal complaint in a law court)
 - ✓ A proximate(immediate) injury resulting from breach of duty of the medical practitioner

Laws relating to medical negligence

- **Law of Tort (a wrongful act):** Tort claims are usually violation of legal duties
 - Tort is relevant for medical negligence cases, because most non-surgery based treatments are initiated without drawing up a contract between the patient and the doctor
 - In all these cases an implied contract comes in to being where the doctor treats the patient who comes in for a checkup and the doctor stands to be liable(responsible) for medical negligence if he satisfies the necessary legal requirements of such a suit .

CONTD....

➤ Law of Contract :

- A contract is an agreement between 2 persons who are legally competent to enter in to one, to do or not to do something
- A contract need not be written down but a written contract is always advisable from the point of view of evidence in a court of law
- Therefore, the medical practitioners including the doctors and the hospitals seek consent from a legally competent patient or his guardian to conduct a legally permitted medical treatment. On him a contract is said to have come in to existence
- Therefore if a valid contract between a doctor and a patient comes in to existence, there is a possibility that on proof of medical negligence he can be sued under such a contract

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- The sections of IPC provide descriptions of the kinds of various offenses (an illegal act) and the resultant punishments that a doctor could be held liable for sections 304 – A, 336, 337 and 338 of IPC

Precautions that should be taken care by the doctor – rational drug therapy

➤ Practice defensive medicine as far as possible :

- Defensive doctor should be able to show whenever required that he had verified his clinical findings through laboratory tests and had a proper plan in mind while choosing a particular mode of treatment, he could avoid a legal verdict against him
- This shows that the doctor was not overconfident of his findings and took all possible measures to ensure that he was not putting the patient through an incorrect treatment

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➤ Record the consent of the patient/relatives using audio/visual technology :

- Most of the patient and their families give consent in an urgency even when the doctor concerned has tried his/her best to explain to the patient about the potential unfavorable conditions that may crop up from the suggested mode of treatment
- Only when the treatment throws up an unwanted result they start doubting the consent they gave initially and decide to file a legal suit
- Most doctors in developed countries chose to record the entire process of seeking consent over a video camera or audio device to insulate (protect) themselves from such law suits where the patients could deny their previous stand

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➤ Avoid engaging in tele medicine :

- Most often patients call up a doctor and after describing their symptoms over the phone seek prescription of medicines etc
- It could be a complete stranger on the other side of the call or someone with whom the doctor is already acquainted with.
- Such medical advice/instruction over the phone should not also be handed down because negligence in medical advice is also recognized in law irrespective of the fact that no consideration has been paid
- Doctors should also refrain from handing down medical advice and instructions to their subordinates, nurses or technicians without first diagnosing the patient themselves for the same reasons

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➤ Do not abandon your patient :

- A medical professional is not required to accept each and every patient for treatment
- But once the doctor-patient relationship is established, the doctor cannot withdraw at will unilaterally
- He or she must give a reasonable notice of withdrawal so that the patient has enough time and opportunity to find a suitable alternative treatment

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➤ Write your prescription legibly :

- If a pharmacist fails to read the name of the drug(s) correctly because of the illegible handwriting of the doctor, the chances of holding the doctor liable (responsible by law) might be significant

➤ Remember that lack of experience is not recognized by the court as a valid defense :

- It is always advisable to all doctors especially those who have entered the medical practice recently to consult senior doctors and experienced colleagues whenever possible and especially when in doubt regarding a mode of treatment
- This could help them learn and take advantage of experience of senior doctors which might have tested and figured out which modes of treatment work the best in a given situation

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- **Always put down all your advice on paper :** Apart from the drugs that are prescribed to the patients it is advisable that doctors put down on paper other important advice that she/he feels is critical for the improvement of the patient
 - So advices like “salt restriction, bed rest, cessation of addition should be prescribed in writing”.
- **Ensure that the consent obtained is valid and an informed one :**
 - The doctor should ensure that he has not obtained the signature on the consent form a person incompetent to contact (mentally ill or a minor patient)
 - He should also have ensured that all risks and complexity of the treatment is explained well in advance and in detail to the patient/relatives, and that the latter was giving the consent voluntarily.

Irrational drug therapy

- Doctors engage in a host of unethical and illegal activities like over charging patients, misusing diagnostic techniques, conducting unnecessary medical examination and experimenting with unethical clinical trials
- This approach of treatment is called Irrational Drug Therapy.

MALPRACTICE

- A medical malpractice claim may arise when a hospital, doctor or other health care professional, through an error or omission in diagnosis, treatment, aftercare or health management, causes an injury to a patient
- An injury that is the result of a medical treatment is not “malpractice” if the medical professional administering the treatment properly advised the patient of all potential risks and exercised due care in providing the treatment.