Chapter

1

Introduction to Medico-legal Issues in Urology

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As a doctor, you don't practice medicine; rather you become the medicine yourself."

Keywords
✦ Ethics ✦ Oaths ✦ Rights ✦ Responsibilities
✦ Communication Skills ✦ Medical Documentation ✦ Record Maintenance

Aim: To give bird's-eye view of legal issues

Objective: A doctor who is aware of legal issues is forearmed in urology practice to prevent litigation in future. The intersection of medicine and law in the care of urology presents unique challenges and considerations. Urologists must be mindful of the legal implications of their actions, particularly when dealing with issues of consent, confidentiality and end-of-life care. Understanding medico-legal principles is essential for providing competent and ethical care.

INTRODUCTION

Medicine is an inexact science but certainly better than "law" in exactness. Hence one cannot predict with certainty an outcome of legal cases in court of law. Outcome of legal cases depends on the particular facts and circumstances of the medical case, and also the personal knowledge, perceptions, notions of the judicial bench who is hearing a particular case. With the same facts and circumstances of the medical case, appellate courts reverse, revise, and review judgements of lower courts. Axiom "you learn from your mistakes" is too little honored in regarding healthcare cases when pleaded in court of law. Negligence by doctors has to be determined by bench who are not trained in medical science. Bar and bench nowadays increasingly question and avoid relying on medical experts' opinion, medical scientific literature. Bar and bench decide medico-legal on the basis of basic legal principles of reasonableness and prudence. Bar and bench are more busy with legal technicalities, procedural law and admitted evidence. There is often a thin dividing line between accident, misadventure, complications occurring in medicine and alleged negligence causing damage. The development of law pertaining to professional misconduct and negligence is far from satisfactory. The legislation is not adequate.

MEDICAL ETHICS

For all intents and purposes, medical ethics can be described as a rule of conduct for medical professionals they shall willingly adopt. One most important board constituted amongst the four autonomous boards under the *National Medical Commission Act-2019* is Ethics and Medical Registration Board (EMRB)[1]. National Medical Commission Act-2019 replaces the *Medical Council of India Act 1956*[2], under which the EMRB shall function. It shall be responsible for maintaining a National Register of licensed medical practitioners and enforcing professional conduct.

ETHICAL OATHS

The Hippocratic Oath is the name of a vow given by medical physicians in the past. This is one of the most famous Greek oaths. In its original form, it required a new physician to swear before several healing deities to uphold a particular code of ethics[3].

CRITICISMS

The Hippocratic Oath has been acknowledged as one of the key sources for medical ethics and was regarded as a "taken-for-granted ethical system," but in the United States, it began to come under scrutiny in the middle of

the 1960s[4]. Sir William Osler said "The philosophies of one era may become the absurdities of the next era, and the foolishness of yesterday may become the wisdom of tomorrow"[5].

Hippocratic ethics came under fire as a result of numerous social changes. As Pellegrino and Thomasma remark, "better education of the public, spread of participatory democracy through civil rights, feminist, and consumer movements, decline in the sense of communally shared values; heightened senses of ethnicity; and a distrust of authority and institutions of all kinds. These forces were accentuated in medicine by the specialization, fragmentation, institutionalization, and depersonalization of healthcare that occurred simultaneously with an expansion in the number and complexity of medical ethical issues"[6].

Uncertainty of Patient's Life in Practice of Medicine

Variability is the law of life. No two faces are the same, so no two bodies are alike, and no two individuals react alike and behave alike under the abnormal conditions where human beings are pushed to the edge of life and death known as critically ill conditions to be taken care of by medical personnel.

If we run a car agency and sell a defective car, the customer can come back and we can arrange a repair or replace the car. But, in medicine there is often no second chance. It is a very risky profession. Success needs no proof but death and disability needs a lot of explanations from medical practitioners.

Doctor–Patient Relationship (DPR)?

Doctor–patient relationship is a Fiduciary relationship. The word Fiduciary derives from the Latin word for "confidence" or "trust". The bond of trust between the patient and the physician is vital to the diagnostic and therapeutic process.

Depersonalization and Hospital–Patient Relationship

New terminology of hospital–patient relationship is emerging because of mediclaim insurance policy. Patients prefer hospitals which provide treatment which is reimbursable under mediclaim insurance policy. Hospitals which can provide cashless treatment under a mediclaim insurance policy are most loved by the patient party. Patient is least interested as to which doctor is going to treat his ailment.

Trust Your Patients

Trust has traditionally been considered a cornerstone of effective doctor–patient relationships. The need for interpersonal trust relates to the vulnerability associated with being ill, the information asymmetries arising from the specialist nature of medical knowledge, and the uncertainty and element of risk regarding the competence and intentions of the practitioner on whom the patient is dependent. Without trust patients may well not access services at all, let alone disclose all medically relevant information.

RIGHTS AND RESPONSIBILITIES OF PATIENTS, PHYSICIANS

1. Patient obligations
2. Public duty for general good and prevention.
3. Compliance with law enforcement authorities, with respect to infectious diseases
4. Responsibilities to uphold professional ethics.
5. Obligations not to commit or cover up illegal activities.
6. Mutual obligations to physicians: No jousting.

Duties of the Patient/Attendant

1. He must divulge all information that might be required for an accurate diagnosis and course of treatment.
2. He must work in cooperation with all physicians, do investigations necessary to identify and treat.
3. He must follow all directions regarding medications, diet, rest, exercise.
4. He must pay the doctor in monetary terms only.

Help of Communication Skills

"The patient will never care how much you know, until he knows how much you care by talking to him" in counselling of patient party is needed to disclose risks and risk associated with patient's treatment, procedure, surgery and complication of disease, drug and treatment before obtaining informed consent.

Medical Documentation and Record Maintenance

Patients and doctors may forget but records will always remember.

Issues related to audio taping, video recording and photography on pen cameras, smartphones and personal cameras are in grey areas.

Confidentiality and privacy are essential to all trusting relationships, such as that between patients and doctors. Moreover, in a healthcare context, patient confidentiality and the protection of privacy is the foundation of the doctor–patient relationship.

Consent, assent, approval, permission and dissent

In India informed consent, real consent, assent, approval and permission by patient party in medical practice is treated synonymously in legal parlance. Dissent or negative consent or refusal in medical practice is an antonym of consent.

Proof of Negligence

A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was

also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

To err and lie or not?

To err is human and to forgive is divine. Saying sorry or apologies requires great strength in character. Patients and legal machinery take this otherwise. In India the moment you say sorry, the patient party will put you in a merry-go-round of legal wheel, where punishment starts the moment it starts wheeling. The end of the merry-go-round ride may take decades.

"Sudden unexpected death" (SUD)

It is rather impossible to find a medical professional who would say that he never faced a medico-legal (ML) situation called "sudden unexpected death" (SUD) and world at large gazing in his face as if he was responsible for death.

ETHICAL CODE UNDER NMC 2019 WAS ROLLED OUT ON 02-08-23 AND HELD IN ABEYANCE ON 24-08-23

Under the National Medical Commission Act which replaces *Medical Council of India Act 1956*, it will have one of the four autonomous boards, the Ethics and Medical Registration Board (EMRB) to maintain a National Register of licensed medical practitioners and regulate professional conduct. National Medical Commission Act ratified the Medical Council of India is empowered by Section 20A read with Section 33(m) of the *Indian Medical Council Act, 1956 (102 of 1956)* to enact Regulations called the *Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002* with approval of Central Government, Gazetted on 6th April, 2002. Ethical code under NMC 2019 was rolled out on 02-08-23 and held in abeyance on 24-08-23 so situation is as it was till next Central Government Gazette notification.

The remedies, which existed before consumer Protection Act-2019 (CPA or COPRA) came into being.

1. Supreme Court
2. High courts
3. Civil courts and special civil judge
4. Permanent Lok Adalat
5. Criminal courts like Judicial Magistrate, Metropolitan Magistrate and Sessions Court
6. Local police stations, in case of death due to negligence of a doctor, could be sued under Section 106 (1) of BNS 2022 (old IPC 304 A of IPC).
7. Local police stations, in case of injuries caused by medical or surgical reasons, Section 125 of BNS 2022 (old 336, 337, 338 of IPC) can be applied.
8. Consumer Protection Act 2019
9. A complaint against a doctor could be lodged with the local state medical council who after conducting enquiry is authorized to suspend or even terminate registration of a doctor.
10. Human Rights Commission

LAWS AVAILABLE AGAINST MEDICAL NEGLIGENCE[7]

a. Civil Law

According to Section 70 of the Indian Contract Act, there is a contract (oral, written, or implied) between a doctor and a patient, and both parties are bound by it. Every individual has rights, and in order to protect those rights, there are legal remedies including liquidated damages. According to the Law of Torts, a doctor shall be responsible for his negligent act where court shall decide about un-liquidated damages, so the doctor is at mercy of the judge who decides compensation if negligence is proved. If a doctor does not give complete or appropriate treatment, then he/she may be held liable. Similarly, if a patient does not pay the fees, doctors can file a civil suit. Doctors can legally take advance deposit before starting treatment. However, it is against the law to keep any patient in confinement on the ground of non-payment of fees. It is a matter of wide knowledge; civil suits are most expensive, time-consuming and cumbersome.

b. Criminal Laws

In order to protect the community, the government has the right to punish the wrongdoer, through various agencies. Criminal laws and police are usually not involved in doctor–patient relationships unless there is gross rashness or negligence resulting either in death or serious injury. Some of the common sections of Indian Penal Code (IPC) which are applicable to doctors include: (i) Sec. 52=BNS 2(11) and Sec. 92 = BNS 30 are related to good faith; (ii) Sec. 87–91 = BNS 25–29 which are related to consent, (iii) Sec. 304-A=BNS 106(1) which is related to death of patient due to negligent act (iv) Sec. 312–316=BNS 88–92 are related to causing abortions or miscarriage without proper consent; (v) Sec. 319–322=BNS 88–92 - read with 336,337,338 =BNS 125, 125a, 125b, deals with causing grievous hurt, or disfigurement endangering the life; (vi) Sec. 340–348=BNS 127 (1–8) are related to wrongful confinement of patient; (vii) Sec 383–388=BNS 308(1–7) related to extortion (viii) Sec. 405,409=BNS 316 criminal breach of trust and (ix) Sec. 499=BNS 356 and 500=BNS 356 which is related to defamation.

c. Specific Laws

These include the Clinical Establishment Act, under National Medical Commission Act 2019 further, it has ratified old medical council rules, regulations vis-à-vis promulgated new rules regulation under the NMC Act, MTP Act-1971, PCPNDT Act-1994, biowaste medical waste rules, Labour Laws, Shop and Establishment Act, income tax and professional tax, etc.

CONSUMER PROTECTION ACT-2019 (CPA OR COPRA)[8]

CPA was implemented in 2019. Medical services were brought into its purview in 1995. Since then the

doctor–patient relationship has deteriorated faster. A consumer can approach the District Commission, State Commission, National Commission and finally the Supreme Court according to jurisdiction or amount of damage claimed. The limitation period is two years; however, it can be extended at courts discretion.

Recently in 2021 a PIL "Medicos Legal Action Group (MLAG) versus Union of India (through Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution) (High Court of Judicature at Bombay) Public Interest Litigation No. 58 of 2021"[9] was filed by a group "MLAG" seeking exemption of healthcare professionals from CPA 2019. This PIL was rejected by Bombay High Court on 25-10-2021 and reaffirmed IMA v/s VP Shantha and ors. III, (1996) CPJ I (SC)[10]. The Bombay High Court even imposed a fine of Rs. 50,000/– against this group MLAG. This cleared the position of CPA 2019 that it still covers healthcare professionals. The matter as SLP under article 136 was rejected by Hon'ble Supreme Court of India on 29-04-2022.

In CPA-2019 definition of word 'Services' under Section 2 of subsection 42 does not include the word 'Healthcare' as against the definition in the original Consumer Protection Bill of 2019. The Hon'ble Minister while piloting the Bill categorically stated that 'commensurate with the recommendations of the Parliamentary Standing Committee on Consumer Affairs, the 'Healthcare' has been kept outside the ambit of the Consumer Protection Act. So , whatever is stated in parliament has no force of law, if not included in legislation. The word "healthcare" was never used explicitly defined in 2(1) (d) of CPA 2019 similarly again not defined in new Section 2(11) of deficiency in CPA-2019. Though 'healthcare' is not included in CPA-2019 in definition creating new in Section 2(11) read with 2(42) on deficiency and services in CPA-2019 but position is same as it was in CPA 1986.

As all doctors know, in 1995 doctors were included as service providers and patients as consumers after the decision of IMA versus VP Shantha (Three judges bench). This judgement is not overruled till date by the Supreme Court. In the present case Consumer Protection Act, 2019 is akin to Consumer Protection Act, of 1986 where 'Healthcare' is not explicitly included in the definition of the word 'Services'. However, the said exclusion is not in terms of a required negative expression which in the normal course would have weaned away the operation and effect of 1995 pronouncement of the Hon'ble Supreme Court.

Even after CPA-2019, the consumer commissions have given judgments on a number of cases of medical negligence. The Supreme Court of India has crystallized the law in detail following the case of IMA v/s VP Shantha, III, (1996) CPJ I (SC) that settled the difficulties in deciding the medical negligence under previous repealed Consumer Protection Act. Prior to the Consumer Protection Act, 2019, the civil remedy was available to a patient against medical negligence, under the law of torts by way of compensation. However, before CPA was enacted, only a few cases relating to such negligence came up before the courts under the law of torts. The reasons for this were requirement of high court fees to file a case, cumbersome procedures and long-time taken by the court to decide the cases. But soon the consumer commissions who are supposed to give judgments within 3 to 5 months have also started suffering from similar problems: High court fees to file a case, cumbersome procedures and long-time taken by commissions to decide cases at hand.

THE CPA 2019: WHAT IS NEW?

1. Earlier a patient wanting to claim compensation of Rs. 20 lakhs had to file a complaint before the District Commission, to the State Consumer Forum if he wanted to claim Rs. 20 lakhs to 1 crore and to the National Commission if the claimed amount was above 1 crore. Now, for a compensation up to Rs. 50 lakh, he has to complain to the District Forum, from Rs. 50 lakh to 2 crores to the State Commission and to National Commission for compensation above Rs. 2 crores. As a consequence doctor can now expect patients to claim higher compensation against doctor because the limit is hike to 50 lakhs for district. Patient will not have to travel to Delhi and can conveniently file the complaint in Mumbai itself (for Maharashtra) for 2 crores. So get prepared to increase Professional Indemnity Insurance Cover[11].
2. Earlier, if a doctor had operated or treated a patient in Mumbai the patient could file a complaint only in Mumbai. Under the new Act, if a doctor had done a TURP on patient from Jharkhand, patient has a right to file a complaint against doctor in any district of Jharkhand's Consumer Commission and one will have to defend in that particular commission in Jharkhand for defending.
3. If a doctor fails to issue a bill or receipt to a patient (for whatever reason, maybe inadvertently) this is unfair trade practice, and makes liable to face under the CPA-2019 and may have to pay compensation.
4. If a doctor discloses personal information given by a patient (unless required by law) the doctor can face action under the new CPA-2019. Hence, strict confidentiality, secrecy is to be maintained by doctors.
5. Previously, one of the judges in every Consumer Forum had to be a current or former High Court or Supreme Court Judge. Not a single person with any legal expertise may be appointed under the new CPA.
6. Previously, a State Judicial Committee was required to appoint the members of the Commission. Currently, members will be appointed by notification from the central government. So anticipate any Tom, Dick, and Harry who lacks credentials to be on the consumer commission.

7. Now a mediation cell will be attached to every forum to facilitate Alternate Dispute Redressal (ADR).
8. In the past, a doctor who disobeyed the Commission's orders may be sentenced up to one month to three years in prison and pay a fine of Rs. 2000 to Rs. 10,000. Now, the doctor will have to serve up to three years in prison and pay as punishment up to Rs. 1 lakh.
9. There is no penalty for false and vexatious complaints by patients. Section 26 of CPA 1986 is removed completely.

How Should a Doctor Approach the Case of Litigation Under CPA/COPRA?

Doctors should not avoid responding to a case. One should reply to legal notice as early as possible. The explanation should address misunderstandings, misrepresentation and other discrepancy or wrong points made out in a written statement in reply to a complaint including an explanation to differentiate between complication and negligence. It is advisable that doctors attend the court in person along with a lawyer. Always take help of medico-legal experts in backroom preparation for affidavits of colleagues and expert witnesses along with medical literature and case laws, whenever necessary. They should give medical scientific references relevant to the case and demand questionnaires in lieu of cross-examination.

Don'ts in CPA/COPRA

Doctors should not show antagonistic or negative attitude towards judges or presume that they are on the side of the litigant, even if their attitude or body language seems unfavourable. They should not disrespect the commission/court. Care should be taken not to hand-over unnecessary details and documents unless they are specifically asked for. Mere litigation under CPA should not make a doctor fearful.

We are in a transitory phase. Nonetheless since in India two-thirds populations reside in villages, hence the transition is getting protracted. But at least in cities, doctor–patient relationship is reduced to name-sake being replaced by insurance managed five star hospital–patient relationship. Even in villages several government schemes like PMJAY, Rajiv Gandhi Arogya Yojana and similar named insurances for below poverty line population are bringing hospital-patient relationship to forefront bidding bye-bye to doctor–patient relationship. The current medico-legal issues are, new clinical establishment act, third party insurance, five star corporate culture replacing doctor owned clinic, nursing homes and hospitals, capping of compensation, guidelines on reusing single use costly medical consumable items with proper sterilization at least two more times, surrogate mother, corneal and organ donation and transplantation, end of life situations and active and passive euthanasia. We expect concrete guidelines to regulate all these; much more is to be done by the government and courts after consulting the medical experts in the field. The future of medico-legal issues is struggle of survival of doctor–patient relationship which is getting replaced by managed healthcare by insurance companies by making medical services being rebooted with commercialization, corporatization, and instrumentations, monitoring gadgets, computerization, robotic surgeries, laparoscopic surgeries in the name of better and safe medical services with five star ambiences. Doctor–patient relationships are being replaced by insurance managed five star hospital–patient relationships.

Doctors, Hospitals, Nursing Homes and Clinics

On the other hand, we have doctors, hospitals, nursing homes and clinics in the private commercial sector. There is a general perception among the middle class public that these private hospitals and doctors prescribe avoidable costly diagnostic procedures and medicines, and subject them to unwanted surgical procedures, for financial gain. The public feel that many doctors who have spent a few crore or more for becoming a specialist, or nursing homes which have invested several crores on diagnostic and infrastructure facilities, would necessarily operate with a purely commercial and not service motive; that such doctors and hospitals would advise extensive costly treatment procedures and surgeries, where conservative or simple treatment may meet the need; and that what used to be a noble service oriented profession is slowly but steadily converting into a purely business.

Comparisons of Government and Private Doctors

But unfortunately not all doctors in government hospitals are paragons of service, nor fortunately, all private hospitals/doctors are commercial minded. There are many doctors in government hospitals that do not care about patients and unscrupulously insist upon 'unofficial' payment for free treatment or insist upon private consultations. On the other hand, many private hospitals and doctors give the best of treatment without exploitation, at a reasonable cost, charging a fee, which is reasonable recompense for the service rendered. Of course, some doctors, both in private practice or in government service, look at patients not as persons who should be relieved from pain and suffering by prompt and proper treatment at an affordable cost, but as potential income-providers/customers who can be exploited by prolonged or radical diagnostic and treatment procedures. It is this minority who bring a bad name to the entire profession[12].

Fear of Litigation

Unfortunately the fear of litigation and violence from patients/relatives has made most doctors defensive; this has resulted into increased clinical investigations, costlier medicines and increased hospitalizations, which

in turn has resulted in even more deterioration in doctor–patient relationship, thus establishing a vicious cycle. "There are, in truth, no specialties in medicine, since to know fully many of the most important diseases a man must be familiar with their manifestations in many organs." Compartmentalization of medicine has made the medical profession less sensitive to human feelings and more or less mechanical. If something bad happens to a patient, then it is labelled complication and not negligence. Doctors in India can find some solace from the fact that the situation here is still not as bad as in Europe or USA where litigation is the order of the day. There is an ambulance chasing medico-legal advocates. It would be unjustified to say that it is the emancipated and enlightened social order of "Google" knowledge, which is at fault and responsible for decaying relations between physician and patient. Key to every aspect of medical, surgical and all related interactions with the patient party is doctor–patient relationship. Let us examine factors which resulted in increasing deterioration of the doctor–patient relationship.

1. A family doctor can facilitate better understanding between patients and specialists. The cheerful friendly family doctor is slowly disappearing since neither patient nor doctors opt for them. This is because of increasing craze for specialization in medicine on part of doctors as well as the patient party and slow depletion of primary care doctors. Family doctor practice should be slowly revived.
2. Doctors and medical institutions live in an "un-virtuous cycle" of referral and kickback that poisons their integrity and destroys any chance of a trusting relationship with their patients. Unethical and greedy attitude of some doctors tarnished the reputation of the entire community and nurtured distrust against doctors in general.
3. Doctors are not formally trained in communication skills and counselling to be ready to use in their practice. Good communication skills are very important buffers against litigation and violence.
4. Indian print and electronic media feels that it is spicy to project negative aspects of the medical profession to earn a higher *target rating point* [TRP]. Media persons like to report on lawsuits and violence against doctors, which encourages lawlessness or abuse of the process of law.
5. Increased number of investigations and increased number of hospital admissions. The reason for increased number of investigations is to document everything which is part of the defensive attitude of each and every doctor and also as per evidence-based medicine. Sometimes mediclaim patients demand unnecessary investigations and admissions to hospital. Admission and investigations increase expectations of patients about guaranteed early cure if investigated well. Vis a Vis doctors tend to do more and more investigations for fear of losing the patient to competitor doctors, if they do not investigate. Also it is no surprise that investigations and procedures are abused as a means of milking patients without hurting anyone's sentiments. Mechanization and ease of doing pathology tests and procedures has led to increased demand for investigations to meet the voracious appetite of machines used for medical investigations. This tendency is further promoted by some hospitals, pathology laboratories and other diagnostic centres who offer commissions to referring doctors. Such incidences are few but this has become common knowledge among people and has decreased their trust in doctors.
6. Generally, the conflicts and tensions have increased in society. People have become edgy and ready to fight at the smallest reasons and pretexts and sometimes even without any reason. This tendency extends to their relationship with medical fraternity doctors also in view of today's turbulent and aggressive society which changes like hues of sky in monsoon season.
7. Patients know that if they misbehave with one doctor and go to another doctor, they will be readily accepted by the next doctor. This is because of lack of unity amongst doctors and oversupply of doctors in urban areas.

What Doctors Can do to Correct and Fix the Situation Prone to Litigations

1. Doctors should stop playing ingenious Gentleman "Don Quixote". Don't do heroic things beyond your level of competence and expertise. In such cases it is better to ask for a second opinion or refer the patient to a centre where the level of expertise, mechanization and modern gadgetry is enough to deal effectively with illness.
2. Atmosphere of transparency, honesty and documentation is always sensed by the patient party in a positive way. These qualities in a doctor are good buffers to hostile behaviour of the patient party and also reduce litigation.
3. Patients should be kept informed at all times perpetually. The doctor should not appear to the patient as though he is hiding the factual position of the patient's condition. Doctors should answer all queries in clear, understandable language explicitly. Doctors should formally learn communication skills for situations which are litigation prone. Doctors should learn and develop good rapport with patients/ relatives by using non-verbal body language in addition to effective verbal language. Doctor should speak by making eye contact with the patient so that the patient party should not sense and perceive the explanation given by the doctor otherwise.
4. Uniform fee structure to all should be displayed in waiting rooms as per NMC ethics (old MCI Ethics 2002 shall prevail till NMC Ethical code under NMC 2019 which was rolled out on 02-08-23

and held in abeyance on 24-08-23. So the situation is as it was till the next Central Government Gazette notification.

5. The fee structure which should match with services that the doctor provides by expressly giving a break up of each thing performed and done by him. Patients should feel that they are getting their money's worth by paying to the doctor. Remember, doctor's fee and other charges should be reasonable and in consonance with expertise, area of practice and location and comparable to peers.
6. Always invest at least 10% of the earned money in repairs, maintenance and upkeep of the ambience of the place and strive hard to invest in providing better facilities for patients each year. Replace weighing scales, BP instruments stethoscope instead self repairing them each time in front of the patient. Worn out equipment and instruments are rather bane than boon.
7. Whenever a medical test or hospital admission is necessary, reasons for their necessity should be discussed with the patients. Doctors should avoid unnecessary hospital admissions and investigations.
8. Doctors can use appropriate humour, judiciously. Pleasant, mild and timely humour comes from light-hearted people and makes the tense atmosphere and situations easy. Humour always befriends people, so also patients.
9. Doctors should develop a genuine interest in patients and their ailments. Patients slowly over years now tend to dislike a doctor who responds with monosyllables and looks disinterested. Paternalistic attitude is more bane than boon. Doctors should develop humane and healing approaches instead of a mechanical attitude of examining patients and treating one and all in a straitjacket.
10. When a doctor refers serious patients to corporate hospitals then it should be for proper reasons and not mechanical referral just to wriggle out of an odd situation. Charges at Corporate Hospitals are often exorbitant and leave big holes in the pockets of the patients making them more toxic and litigation prone towards referring doctors.
11. In absence of adequate staff and qualified doctors, serious patients requiring round the clock expert monitoring should not be admitted to nursing homes. It is mandatory that nursing homes have adequate staff and qualified doctors even during the night.
12. Doctors should maintain proper documentation of all cases and never manipulate medical records.
13. All junior doctors, paramedical and supporting staff should be trained to behave humbly and respect the patient party. Everyone should be trained not to give unqualified, unnecessary comments in response to questions asked by patients. Their comments often lead to confusion amongst doctors and patients and subsequent litigation.
14. As all of us are aware, patients can be very unreasonable. Hence despite all precautions and positive steps from a doctor's side tensions, problems may arise from the patient party. Remember, mistakes do occur. When a tussle with a patient party occurs then they will highlight that mistake which may not be responsible for a bad outcome. Hence, it is advisable that every doctor be covered with medical indemnity insurance to manage unavoidable risks arising out of this profession.

SUMMARY AND CONCLUSIONS

The medical profession was considered to be one of the noblest professions. Doctors are no longer regarded as infallible and beyond legal questioning. Corporatization of healthcare has made it like any other business in the eyes of law. The medical profession has to pay at commercial rates for premises, machines, men, water and electricity, hence they are forced to be guided by the profit motive. Rapid advancements in medical science and technology have proved to be efficacious tools for the doctors in the better diagnosis, monitoring and treatment of the patients. Since all these advances do not gravitate to each and every medical practitioner, the mismatch of infrastructure leaves big holes for prosecuting doctors by alleging negligence. Bar and bench does not understand this prevalent gap of medical infrastructure available to each medical practitioner and exigencies of economics of medical care. The patient party chooses the cheapest healthcare facilities available in the area in which they live in without comparing the benefits. The trade-offs of cheapest obviously are not best. Obviously when more often than not unless it is not complicated case the strategy works out but medically in complicated cases, one stands to lose precious time—what in medical parlance is known "golden hour" like in heart attacks and brain strokes[13–15].

Take Home Messages

Medical negligence laws refer to a breach of duty of medical care by a physician *towards patient*.

Must Avoid Things

Higher the risk higher is the degree of duty of care imposed by law, hence one should refer to appropriate specialists to avoid high risk patients.

Do Not Do

Don't treat beyond one's knowledge and skill.

Warnings

It is not necessary to follow every new modality of investigation or management, which is latest but should never adhere to outdated modalities of treatment.

Messages which the Reader Must Be Aware

Negligence is an offense under tort, IPC, Indian Contracts Act, Consumer Protection Act and many more legal fields.

Must Do Thing

One can submit eye and expert witness without being asked by consumer court.

Medical Negligence Pearls

If a medical professional acted in good faith to save a patient's life in an emergency situation, they may not be considered negligent by court of law.

Only One Fact To Remember

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a reasonable man would not do.

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FURTHER READING

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