



Introduction to Medicolegal Issues in Dermatology and Cosmetic Dermatology

Mahesh Baldwa, Varsha Baldwa, Namita Padvi, Sushila Baldwa

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

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

Objective: A doctor who is aware of legal issues is forearmed in dermatology practice to prevent litigation in future.

Introduction

In this book use of word 'dermatology' and 'dermatologist' includes all specialist physicians who care for diseases of skin, VD, calling them dermatologist and cosmetic dermatology physician. About two decades ago there were hardly any medicolegal issues in dermatology and cosmetic dermatology. Soon the 'dermatology' cases have picked up pace. In fact, Kunal Saha case is related to toxic epidermal necrolysis (TEN), where highest ever paid compensation still holds record up to 2023. Medicolegal issues in dermatology and cosmetic dermatology are evolving branch of legal issues which are gaining popularity because of advent of new Consumer Protection Act, 2019. It is interesting and perplexing that the word 'cosmetology' does not exist in any of the standard skin and VD, dermatology textbooks read anywhere in India or abroad. But commonly medical doctors use 'cosmetologist' as suffix though they are qualified dermatologist physicians in skin, VD and hold diploma or degree in subject.

Cosmetic Dermatology versus 'Cosmetologists'

It is unfortunate to note that dermatologists (with qualifications in cosmetic dermatology) who are qualified physicians with MBBS, DDV, DVD, MD, DNB degree and registration with NMC or SMC registrations

who are specialized qualification in dermatology (with qualifications in cosmetic dermatology) are for commercial reasons unwittingly degrading their qualified status by calling themselves 'cosmetologists'.

Field of Specialization of Medical Dermatologist and Cosmetic Dermatologist

As dermatologists, one must use terms to capture the value and virtue of medical education and medical expertise attached and which comes along with such qualifications. Dermatologist physicians care for not only the external aspects of the living body but also internal anatomy and physiopathology of skin. The skin is the body's largest organ. It measures about 1.5 to 2 m² in adults and weighs about 15% of total body. As dermatologist physicians, we treat not only hair and skin diseases but consider the overall health of the patient when we prescribe treatments. We as cosmetic dermatologists are not 'cosmetologists'/beauticians, who care for the cosmetic appearance of the living body parts such as the skin, hair and nails. Cosmetic dermatologist physician is qualified medical dermatologist registered with NMC and SMC, who not only cares for skin, hair etc. but also about whole living human being one is treating but 'cosmetologists'/beauticians have no knowledge about internal working of human body systems.

Who then are 'Cosmetology' or 'Cosmetologist'? They are just 'Beauticians'

'Beautician' is another term for a cosmetologist in India. The term "cosmetology" refers to the study of the skin, hair, and nails. Hair shaping, manicures, pedicures, application of artificial nails, special occasion hairstyling, shampooing hair, cosmetic application, body hair removal, chemical hair relaxers or straighteners, permanent waves, coloring and highlighting of hair, and treatments for hair extensions or wigs are just a few of the services offered for this kind of work. In India, one does not require a license to practice 'Cosmetology,' 'Beauty,' or 'Cosmetology.'

'Cosmetic Dermatology Society of India' Clarifies that "Cosmetology" is a Non-medical Subject

CSI is still known as CSI in India, but it has changed its name to the 'Cosmetic Dermatology Society of India', which is accepted and approved internationally. With more than a thousand members, it is the largest formal association of medically competent cosmetic dermatologists in India. The present fad to flippantly refer to cosmetic dermatological procedures performed by medical professionals as "cosmetology" is not only wrong but damaging reputation of cosmetic dermatology specialists. Little do competent medical skin specialist doctors understand that by doing so, we doctors unintentionally harming their own professional reputation.

Nature of Medical Science

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. The specific facts and circumstances of the medical case, as well as the individual knowledge, views, and ideas of the judicial bench hearing a particular case, all affect how legal cases turn out to be. With same facts and circumstances of the medical case, appellate courts reverse, revise, and review judgements of lower court. Axiom "you learn from your mistakes" is too little honored in regarding healthcare cases when pleaded in court of law. Negligence by medical doctors and dermatologists has to be determined by bench who are not trained in medical science. Bar and bench now a day's increasingly question and avoid relying on medical experts' opinion, medical scientific literature. Bar and bench decide medicolegal 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 legislations are not adequate.

Medical Ethics

For all intents and purposes, medical ethics can be described as a rule of conduct for skin specialist that as medical professionals they shall willingly adopt. One most important board constituted amongst the four autonomous boards under the National Medical Commission Act, 2019 (EMRB)¹. National Medical Commission Act, 2019 replaces the Medical Council of India Act, 1956² under which Ethics and Medical Registration Board (EMRB) shall function. It shall be responsible for maintaining a National Register of licensed medical practitioners and enforcing professional conduct for skin and VD specialists. On 2nd August 2023, new National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023 is rolled out and rolled back on 24th August 2023.

Ethical Oaths

The Hippocratic Oath is the name of a vow given taken 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 health care that occurred simultaneously with an expansion in the number and complexity of medical ethical issues."⁶

Uncertainty of Patient's Life in Practice of Dermatological Medicine

The law in life is variation of living beings. No two bodies, no two faces, no two people have the same

reactions or behave in the same way when given medical treatment. In skin, VD medicine there is more often than not no second chance. Success needs no proof but side effects, complications, disability and rarely death needs lot of explanations from medical practitioners in court of law.

Doctor–Patient Relationship (DPR)

The relationship between a doctor and a patient is fiduciary. The Latin word meaning ‘confidence’ or ‘trust’ is the root of the word ‘fiduciary.’ The relationship of trust between the patient and the doctor is essential to the process of diagnosis and treatment.

Depersonalization and Multispecialty Hospital–Patient Relationship

The emergence of new terms for the hospital–patient interaction is caused by the mediclaim insurance policy. Patients favor multi-specialty polyclinics and hospitals that offer VD and skin treatments that are covered by cashless mediclaim insurance policies. The skin and VD patients choose hospitals that can offer cashless treatment over individual spin specialist clinic. The patient is least concerned with which skin, VD doctor will handle his condition and how efficient the physician is.

Rights and Responsibilities of Patients, Physicians, and Dermatologists towards

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 in the case of a private medical skin specialist.

Help of Communication Skills

“The patients will never care how much you know, until they know how much you care by talking to him”.

Before getting informed consent, patient party counseling is required to reveal dangers and risks associated with the patient’s treatment, procedure,

surgery, complications of disease, drug, and treatment. There is a rare chance of change in colour, texture and smoothness of skin as complication. Similarly counseling, forewarning about permanent epilation be done which may not be 100% successful nor hair transplant and re-growth.

Medical Documentation and Record Maintenance

Patients and dermatologists may forget but medical records will always remember.

Grey Area Related to Audio Recording, Video Recording, and Photographing using Pens, Smart Phones, and Personal Cameras

The foundation of any trustworthy relationship, including the one between a patient and a dermatologist, is of confidentiality and privacy and safeguarding it. Hence audio recording, video recording, and photographing using pens, smart phones, and personal cameras may breach it.

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 antonym of consent.

Proof of Negligence

A simple carelessness, a mistake in judgment, or an accident does not constitute evidence of medical professional negligence. A doctor cannot be held responsible for negligence simply 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 skin specialist did not follow. This is true as long as the doctor follows a practice which is reasonable, logical and acceptable to peers in medical profession at relevant time.

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 takes this otherwise. In India moment you say sorry patient party will put you in merry go round of legal wheel, where punishment starts moment it starts wheeling. The end of merry go round ride may take decades.

Ethical Code under NMC 2019

Under National Medical Commission Act which replaces Medical Council of India Act, 1956, it will have one of the four autonomous board shall be Ethics and

Medical Registration Board (EMRB) to maintain a National Register of licensed medical practitioners and regulate professional conduct. On 2nd August 2023, new National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023 is rolled out new code of conduct rolled out on 2.8.2023 was rolled back on 24.8.2023.

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 Session's court
6. Local police station, in case of death due to negligence doctor could be sued under section 304 A of IPC [this shall be replaced by Bharatiya Nyaya Sanhita (BNS), 2023].
7. Local police station, in case of injuries caused by medical or surgical reasons, Sections 336, 337, 338 of IPC [this shall be replaced by Bharatiya Nyaya Sanhita (BNS)], 2023 can be applied.
8. Consumer Protection Act, 2019
9. A complaint against doctor could be lodged with 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 Negligence⁷

(a) Civil Laws

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 unliquidated damages. 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, medical doctors and dermatologists can file a civil suit. Medical doctors and dermatologists can legally take advance deposit before starting treatment. However, it is against the law to keep any patient in confinement on the ground of nonpayment of fees. It is a matter of wide knowledge, civil suits are most expensive, time-consuming and cumbersome.

(b) Criminal Laws

The government has the right to punish the wrongdoer through numerous law enforcing agencies like police

in order to safeguard the community. Unless there is flagrant recklessness or negligence that results in death or significant injury, criminal laws and police are often not involved in doctor-patient relationship. Some of the common sections of the Indian Penal Code (IPC) that apply to medical professionals, such as doctors and dermatologists, are as follows: (i) Sections 52 and 92 are related to good faith; (ii) Sections 87–91 are related to consent; (iii) Sec. 304A is related to patient death as a result of negligence; (iv) Sections 312–316 are related to inducing abortions or miscarriages due to use of drugs (v) Sections 319–322 read-with 336, 337, 338 deal with causing grievous hurt, or disfigurement endangering the life; (vi) Sections 340–342 are related to wrongful confinement of patient; (vii) Sections 383, 384 related to extortion; (viii) Sections 405, 406 criminal breach of trust; and (ix) Sections 499 and 500 which are 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 a vis promulgated new rules regulation under the NMC Act, Bio waste medical waste rules, Labor 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 since 1995. Since then the Doctor-patient relationship has deteriorated faster. Depending on the jurisdiction or scope of the claim, a consumer may go before the District Commission, State Commission, National Commission, and lastly the Supreme Court. The two-year limitation period may be extended at the courts' discretion starting from cause of action. 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 vs VP Shantha and ors. III, (1996) CPJ I (SC).¹⁰ The Bombay High Court even imposed the fine of Rs. 50,000 against this group MLAG. This cleared the position of CPA 2019 that it still covers healthcare professional. The matter as SLP under article 136 was rejected by Hon'ble Supreme Court of India on 29.4.2022.

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 lakh to 1 crore and to the National Commission if the claimed amount was above 1 crore. Now, for a compensation up to Rs 1 crore, he has to complain to the District Forum, From Rs 1 crore to 10 crores to the State Commission and to National Commission for compensation above Rs 10 crores. As a consequence doctor can now expect patients to claim higher compensation against doctor because up to Rs 10 crores patient will not have to travel to Delhi and can conveniently file the complaint in Mumbai itself (for Maharashtra). So get prepared to increase Professional Indemnity Insurance Cover. Recently, in December 2021, there is some relief under consumer protection rules notified have lowered pecuniary from limit 1 crore to 50 lakhs for district, 2 crores for state from 10 crores, and 10 crores to above 2 crores for national commission.¹¹

2. Earlier, if doctor had operated or treated a patient in Mumbai the patient could file a complaint only in Mumbai. Under the new Act, if doctor had done a cholecystectomy on critically ill 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 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 doctor discloses personal information given by a patient (unless required by law) doctor can face action under the new CPA-2019. Hence, strict confidentiality, secrecy is to be maintained by doctor.
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 between Rs 2000 and 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.

How should a Doctor Approach the Case of Litigation under CPA/COPRA?

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

Don'ts in CPA/COPRA

Medical Doctors and dermatologists 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 unfavorable. They should not disrespect 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.

Comparison of Government and Private Medical Doctors

But sadly, not all dermatologists and medical doctors in public hospitals are models give good service, and luckily, there is no dearth of them in the private sector. In government hospitals, there are many dermatologists and medical doctors who don't care about their patients and unscrupulously demand 'unofficial' payment for free care or insist on private consultations. On the other hand, many dermatologists and medical doctors provide the best care possible without abusing their patients and at a fee that is a fair for what services they provide. Rarely dermatologists and medical

doctors do not cure pain and suffering of skin and VD patients and use them as potential income-providers who may be exploited by prescribing costly diagnostic and treatment procedures. It is this minority who bring a bad name to the entire profession.¹²

State Responsible for Health Care but General Practice is being Replaced by Specialization

Law intervenes to offer redress alleged negligence. This is true even though they may have already identified the illness with reference to the symptoms and medical history with 90% certainty based on their knowledge and experience. Still, in order to avoid any accusations of negligence, an increasing number of private medical doctors and dermatologists have begun to play it safe by submitting or requiring their patients to undergo a variety of expensive diagnostic procedures and tests. Second, an increasing number of dermatologists and medical doctors in private practice are being compelled to insure them, with the expense finally being passed on to the patient in the form of a higher fee. Due to four factors, including (i) the commercialization of medical treatment; (ii) the rise in specialists relative to general practitioners and the need for multiple doctor consultations; (iii) a wide range of expensive diagnostic and therapeutic procedures, it is now common that a relatively simple ailment, which once required hardly any expense now needs several hundreds or thousands of rupees when treated.

Fear of litigation

Unfortunately the fear of litigation and violence from patients/relatives has made most medical Doctors and dermatologists 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 medical profession less sensitive to human feelings and more or less mechanical. If something bad happens to patient then it is labeled as complication and not negligence. Medical Doctors and dermatologists 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 order of the day. There is ambulance chasing medicolegal 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 patient party is doctor–patient relationship.

SUMMARY AND CONCLUSIONS

The medical profession was considered to be one of the noblest professions. Medical Doctors and dermatologists are no longer regarded as infallible and beyond legal questioning. Corporatization of health care has made it like any other business in 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 medical Doctors and dermatologists in the better diagnosis, monitoring and treatment of the patients. Since all these advancements do not gravitate to each and every medical practitioner, the mismatch of infrastructure leaves big holes for prosecuting medical Doctors and dermatologists 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 is 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.^{13,14}

LEARNING KEY POINTS

1. Follow laws connected to healthcare
2. Follow ethics connected to healthcare
3. Do everything diligently prudently with due care and caution
4. Document all what is done
5. Take consent
6. Don't fear litigation

MCQ

1. Consumer Protection Act, 2019 covers healthcare service:
 - a. Yes
 - b. No
 - c. Don't know

Ans: a

REFERENCES

1. National Medical Commission Act, 2019.
2. Medical Council of India Act, 1956 (repealed and replaced by National medical commission act, 2019).
3. https://www.nlm.nih.gov/hmd/greek/greek_oath.html assessed on 17.1.2022.
4. Fabrice Jotterand (2005). The Hippocratic Oath and Contemporary Medicine: Dialectic Between Past Ideals and Present Reality? *Journal of Medicine and Philosophy*, 30:1, 107-128, DOI: 10.1080/03605310590907084.
5. https://www.brainyquote.com/quotes/william_osler_393275 assessed on 17.1.2022.
6. Pellegrino ED and Thomasma DC, 1993. *The virtues in medical practice*, New York: Oxford University Press.
7. Tiwari SK. Legal Aspects in Medical Practice, *Indian Pediatrics* 2000; 37: 961-966, <http://www.indianpediatrics.net/sept2000/sept-961-966.htm> assessed on 17.1.2022.
8. Consumer Protection Act, 2019 (replaces repealed Consumer Protection Act, 1986).
9. 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.
10. IMA vs VP Shantha and ors. III, (1996) CPJ I (SC).
11. <https://www.ndtv.com/business/govt-notifies-new-rules-for-consumer-commissions-national-bodys-jurisdiction-enhanced-2680187> assessed on 17.1.2022.
12. Samira Kohli vs Prabha Manchanda—In Samira Kohli vs. Prabha Manchanda Dr. and another (2008) CPJ 56 (SC).
13. Baldwa M, Baldwa V, Padvi N, Baldwa S. *Legal Issues in Medical Practice*, Published by CBS Publishers & Distributors Pvt Ltd, India, 2018, ISBN 10: 938647834X ISBN 13: 9789386478344.
14. Baldwa M., Baldwa V. Padvi N. Baldwa S, *Legal Issues in Critical Care*, Published by CBS Publishers & Distributors Pvt Ltd, India, 2022, ISBN : 978-93-90709-13-7.