Doctor-Patient Relationship & Medical Negligence

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The principal objective of the medical profession is to render services to humanity with full respect for human dignity.
Medical Profession

➢ Most pious profession-A doctor is placed only second to almighty God.

➢ Humanitarian service- Its objective is improvement of life of the people.

➢ Its service oriented

➢ It is a science of uncertainty and the art of possibility.
Right to health

➢ Article 25 Universal Declaration of Human Rights, 1948

➢ Article 12 the International Covenant on Economic, Social and Cultural Rights, 1966

➢ Article 21 of the Constitution of India

➢ Articles 38, 39(e) (f), 42, 47 and 48
WHO: Doctor spends too little time

- Dispensing time - Less than 60 sec, in developing countries!
- Only 50% patients receive medicine guidance & 33% of them patients don't know how to take medicine on leaving.
- Doc-patient ratio 1:1700 where as 1.5:1000 in developed nation.
- According to Health Ministry- 4 lakh more doc needed by 2020 for 1:1000 ratio.
In primary care 40 % in public sector & 30% in pvt sector are treated according to standard treatment guidelines.

80% medicine dispensed by untrained personnel

20-50% medicines not labeled!

In India 66% antibiotics sold without prescription
NERGLIGENCE

Ingredients:

- duty to take care
- breach of duty
- results in damage

Negligence is actionable whether committed by a doctor, a lawyer, a builder, a manufacturer, an architect or any individual.
NEGLIGENCE

3 Ds:
- Duty
- Default
- Damage
Negligence is breach of a duty caused by

The omission to do something, which a reasonable man, guided by those considerations which ordinarily regulate human affairs would do (Laxman Balakrishna Jhoshi V. Trimbak Babu Godbole (1969) 1 SCR 206) or

Doing something, which a prudent and rational man would not do (Director Mary Queen Mission Hospital vs M. J. Jose)
DUTIES OF A DOCTOR

Doctors generally have certain duties towards their patients. Some of the important duties are:

- To exercise a reasonable degree of skill and knowledge and a reasonable degree of care;

- To exercise reasonable care in deciding whether to undertake the case and also in deciding what treatment to give and how to administer that treatment;

- To extend his service with due expertise for protecting the life of the patient and to stabilize his condition in emergency situations;
➢ To attend to his patient when required and not to withdraw his services without giving him sufficient notice;

➢ To study the symptoms and complaints of the patient carefully and to administer standard treatment;

➢ To carry out necessary investigations through appropriate laboratory tests wherever required to arrive at a proper diagnosis;
➢ To advise and assist the patient to get a second opinion and call a specialist if necessary;

➢ To obtain informed consent from the patient for procedures with inherent risks to life;

➢ To take appropriate precautionary measures before administering injections and medicines and to meet emergency situations;
➢ To inform the patient or his relatives the relevant facts about his illness;

➢ To keep secret the confidential information received from the patient in the course of his professional engagement and

➢ To notify the appropriate authorities of dangerous and communicable diseases.
Professional Negligence

In law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally and a professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have, or, he did not exercise, with reasonable competence in a given case, the skill which he did profess. {Jacob Mathew vs State of Punjab III (2005) CPJ 9 (SC)}
BOLAM TEST

The test is the standard of the Ordinary skilled man exercising and professing to have special skill. A man need not possess the highest skill;

It is sufficient if he exercises the ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of competent reasonable man at the time.

There may be one or more perfectly proper standards, and if conforms with one of these proper standards then he is not negligent.

*Bolam v. Friern Hospital Management Committee* (1957) 1 WLR 582
The doctor is not held negligent simply because something goes wrong. He is not liable for mischance or misadventure, or for an error of judgment.

He is not liable for taking one choice out of two or for favouring one school rather than another.

He is only liable when he falls below the standard of a reasonably competent practitioner in his field - “an ordinary member of the profession who professes to have those skills would exercise in the circumstances in question”.
However, there is difference in ‘standard of care’ on one hand and ‘degree of care’ on the other.

The standard of care expected from a doctor remains same in all the cases, but the degree of care will be different in different circumstances.

A higher degree of skill is expected from a specialist when compared to that of a generalist.

What amount to reasonable degree of care, changes with the advancement of science and technology. A doctor is required to constantly update his knowledge and improve the standard expected of him.
Informed consent
'Informed consent

Consent that is given by a person after receipt of the following information:

➢ nature and purpose of the proposed procedure or treatment;
➢ expected outcome and the likelihood of success;
➢ the risks;
➢ the alternatives to the procedure and supporting information regarding those alternatives;
➢ Effect of no treatment or procedure, including the effect on the prognosis and the material risks associated with no treatment.
➢ Instructions concerning what should be done if the procedure turns out to be harmful or unsuccessful.
Informed consent - Exceptions

Therapeutic Privilege

- In non elective treatment –one that is essential from a therapeutic point of view, where there is no choice to the patient but to opt for it- a doctor can invoke the protection of therapeutic privilege for non-disclosure.

- It cannot be extended to an elective treatment or a non-life threatening treatment like sterilization operation i.e one that a patient is free to choose.
**Emergency**

In circumstances of great urgency warranting immediate treatment to save the life of a patient there is no time to disclose the risks, the nature of proposed treatment and alternative methods of treatment and as such the doctor can withhold the information with immunity from liability.

*Dr. T.T. Thomas vs. Elisa I* (1987) ACC 445, AIR 1987 Ker 52

**Waiver**

A patient may repose his confidence on a doctor and request him not to furnish any information, in which case the doctor may get a privilege of withholding information.
A.S.Mittal v. State of UP; AIR 1989 SC 1570

Here irreparable damage was done to the eyes of some of the patients who were operated at an eye camp.

“A mistake by a medical practitioner which no reasonably competent and a careful practitioner would have committed is a negligent one.”

The law recognizes the dangers which are inherent in surgical operations and that will occur on occasions despite the exercise of reasonable skill and care.
Poonam Verma v. Ashwin Patel;
AIR 1996 SC 2111

A doctor who was registered as a medical practitioner and who was entitled to practice in homoeopathy only was held to be guilty of negligence per se for prescribing allopathic medicines resulting in the death of the patient.
Burden of Proof

➢ General rule - the burden of proving negligence lies on the party who alleges it.

➢ It is for the patient complainant to establish his claim against the medical man.

➢ If the initial burden of negligence is discharged by the claimant, it would be for the hospital and the doctor concerned to substantiate their defence that there was no negligence.
Proof of Malpractice

➢ Expert opinion/ Medical Literature

➢ No need for expert opinion
   • Res ipsa loquitur (the thing itself speaks)
     • Sponge in abdomen
     • Right leg-left leg
Expert opinion

➢ Opinion of a person having special skill or knowledge in medical science

➢ His evidence is really of an advisory character.

➢ The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criterion to the facts proved by the evidence of the case.

➢ Whether such evidence could be admitted or how much weight should be given thereto lies within the domain of the court.

➢ Examined as a witness in court and has to face cross-examination
Res ipsa loquitur

“I know brain surgeons are suppose to be brilliant, but anybody can lose their car keys.”
➢ The event was of a kind that ordinarily would not have occurred absent negligence

➢ The injury must have been caused by an agency with the defendant’s exclusive control

➢ Injury must not have been due to voluntary act or contribution of plaintiff and

➢ Evidence of the true explanation of event must be more readily accessible to defendant than to plaintiff.
There may be cases which do not raise such complicated questions and the deficiency in service may be due to obvious faults which can be easily established.

- Removal of wrong limb
- Performance of operation on wrong patient
- Giving injection of a drug to which the patient is allergic without looking into the outpatient card containing the warning
- Use of wrong gas during the course of anesthetic
- Leaving inside the patient swabs or other items of operating equipment after surgery.

➢ Mop left in the body of the patient which resulted in the formation of pus and eventually leading to the death of the patient.

➢ The court held that the doctrine of *res ipsa loquitur* clearly applied and the state is liable to pay compensation.
Medical Services & CP Act
Of Services

- Any person who hires any services for a consideration and

- includes any beneficiary of such services when availed of with the approval of the hirer.
M/s Spring Meadows Hospital v. Harjot Singh Ahluwalia AIR 1998 SC 1801

- The child is a consumer being the beneficiary of the services hired by the parents

Indian Medical Association v. V.P. Shantha AIR 1996 SC 550

- The patients who are rendered free service are the beneficiaries of the services hired by the patients who paid for the services.
Indian Medical Association v. V.P. Shantha (1995) 6 SCC 651; AIR 1996 SC 550

➢ Medical practitioners are not immune from a claim for damages on the ground of negligence.

➢ The fact that they are governed by the Indian Medical Council Act and are subject to the disciplinary control of the Medical Council of India and / or State Medical Councils is no solace to the person who has suffered due to their negligence and the right of such person to seek redress is not affected.
a medical insurance policy -beneficiary of the service for which payment has been made by the insurance company - consumer.

the relationship between the doctor and a patient carries with it certain degree of mutual confidence and trust and therefore the services of personal nature but no relationship of master and servant contract between them cannot be treated as a “contract of personal service” but a “contract for services.”
The three categories:

(i) Where services are free of charge to everybody - Doctors and hospitals are outside the purview of “service” under Act

(ii) Where charges are required to be paid by everybody - Doctors and hospitals would clearly fall within the ambit of “service”.

(iii) Where charges are required to be paid by persons availing the services but certain categories of persons who cannot afford to pay are rendered service free of charge. Doctors and hospitals would fall within the ambit of the expression “service”; persons who are rendered free service are the “beneficiaries” and as such come within the definition of “Consumer”.
In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the Civil Court for appropriate relief as provided under Section 3 of the Act.

However, in *Dr. J.J. Merchant v. Shrinath Chaturvedi* (AIR 2002 SC 2931) the court held that in such cases the party need not be directed to approach civil court.

Where the deficiency in service is due to the obvious faults such as removal of the wrong limb or the performance of the operation on a wrong patient or giving injection of a drug to which the patient is allergic without looking into the outpatient card containing the warning or use of wrong gas during the course of an anesthetic or leaving inside the patient swabs or other items of operating equipment after the surgery, such cases can be disposed of by the consumer courts.
The remedies include the award of compensation “for the loss or injury suffered by the consumer due to the negligence of the opposite party.” (S.14 (1) (d))
Unfair Trade Practices

➢ Dr. M. Kumar vs. Vijay Kumar Srivastava III (2011) CPJ 113 (NC)

➢ Ajay Gautam Vs. Amritsar Eye Clinic & Ors. NCDRC First Appeal No. 428 of 2004 decided on 28th August, 2012

advertisement clearly held out to the prospective patients about a kind of guarantee ‘to get rid of spectacles and contact lenses’ and ‘to see the world at large without spectacles’.

➢ Nadiya vs Proprietor Fatima Hospital & Ors. II (2001) CPJ 93 (Kerala SCDRC)
Vicarious liability of hospitals

The hospital may be held liable directly responsible for the faulty premises, equipment, inadequate or unqualified staff and other organisational errors and may also be held vicariously liable for the fault of their employees. The hosp. authorities are responsible for whole of their staff, not only nurses and doctors but also for anesthetists and surgeons. The hosp can not escape liability by mere statement that it only provides infrastructural facilities, services of nursing staff, supporting staff and technicians and that it can not *suo motu* perform or recommend any operation/amputation.
What patients should know?

➢ Ask for your Medical records & preserve them.
➢ While going to a doctor, take all previous medical reports
➢ get your doubts regarding the treatment clarified
➢ Ascertain the qualifications and the experience of the doctor
➢ take a second expert opinion to double check
➢ Before giving written consent for the treatment read the contents
➢ untoward complication, allergies or pain bring it to the notice of the doctor
➢ Take the medication prescribed in proper manner
Follow doctor’s instructions & prescriptions

Quality, cost and the benefits of treatment must be discussed.

Allopathic treatment only for specialist who does possess any degree or diploma in Allopathy

follow the advice of the doctor regarding investigation and treatment

Do not desert the doctor and go away without informing the doctor
THANK YOU