Medical Negligence in Military Hospitals

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Abstract

Background: Bringing the doctors under the ambit of Consumer Protection Act has made an impact on doctor-patient relationship. There has been an increase in legal cases of medical negligence in the recent past. This article provides practical information on medical negligence.

Methods: Complaints received at Army Headquarters were studied to understand the factors involved in medical negligence.

Result: Various aspects of medical negligence including doctor-patient relationship in the military set up have been discussed. Preliminary measures to be taken to avoid cases of negligence are enumerated.

Conclusion: Good communication skills to build a rapport with the patient is the key to avoid majority of the complaints. The doctor must pay due courtesies, respect and care to the patient besides maintaining medical records scrupulously.

MJAFI 2007; 63 : 172-174

Key Words : Medical negligence; Doctor patient relationship

Introduction

Military Hospitals (MHs) in India have been providing medical care to its clientele for over 150 years. The last few decades have seen many scientific and technological advances, decreasing mortality, morbidity and overall improvement in quality of life. At the same time there are some negative changes such as decreasing standard of medical education, decreasing ethical values, commercialisation and corporate culture in the management of patients [1]. These changes have significantly affected the doctor patient relationship which was based on mutual trust. In today's situation this relationship is strained and bringing doctors under the ambit of Consumer Protection Act (CPA) has further marginalized this relationship. The legal cases of medical negligence are rising because of the ease with which these cases can be initiated in a consumer court [2].

Of all the challenges perhaps none can be so threatening and draining for a doctor, on an emotional, personal and professional level, as being a defendant in a medical malpractice claim. This is especially true when the individual initiating the claim is the very patient, the defendant physician was earnestly trying to help. The purpose of this article is to provide the medical officers in military hospitals with practical information about the genesis and mechanics of medical negligence suits.

Who brings claims?

The general rule in medical care delivery is that when

one sees a doctor for a treatment or examination and the medical provider agrees to perform the necessary services, the implication is that the medical care provider will render these services with requisite skill and care. The failure to provide these services with reasonable skill and care may give rise to action in medical negligence under criminal, civil or consumer courts [3]. Only 2-4% of patients injured through negligence, file claims yet five to six times as many patients who suffered injuries those are not legally compensable, also file malpractice claims [4]. According to objective theory of negligence [5], the carelessness in approach towards the patient and the act of commission results in injury to the patient.

Sometimes the unexpected results may not be due to negligence of the doctor but also due to negligence of patients or relatives. This is known as contributory negligence e.g. patient not coming for follow up as advised, failure to follow instructions, patient leaving hospital against medical advice etc. The burden of proof of contributory negligence on the part of the patient is on the doctor [2].

Duties of a Doctor

The duties of a doctor when he undertakes the treatment of the patient have been clearly described by the Supreme Court in *Lakhshman Joshi v/s Dr Trimbak* AIR 1969 SC 128. A person who holds himself out ready to give medical advice and treatment, impliedly undertakes that he is possessed of skill or knowledge

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for the purpose, such person when consulted by a patient owes him certain duties, namely a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in administration of that treatment. A breach of any of these duties gives a right of action for negligence to the patient. The petitioner must bring to his task a reasonable degree of skill and knowledge and must exercise reasonable degree of care. The judgment given by Honourable Supreme Court of India dated August 3, 2004 is historical for medical fraternity. The verdict "when patient's death was due to an error in judgment, no criminal liability should be attached to it", has relieved the doctors as the police is indiscriminately implicating the doctors on frivolous complaints under section 304 A of Indian Penal Code i.e. death due to negligence or even slapping charges of 304 I.P.C. i.e. culpable homicide not amounting to murder [6]. Recent Supreme Court ruling states that 'negligence in the context of medical profession necessarily calls for a treatment with a difference and a simple lack of care, an error of judgment or an accident is not proof of negligence on the part of the medical profession. Verdict clearly says that 'extreme care and caution' should be exercised while initiating criminal proceedings against doctors for alleged medical negligence. The court has also drawn elaborate safeguards including avoiding arrest unless it was proved and done under inevitable circumstances [7].

Importance of Physician – Patient Relationship

There is often a fine line between medical malpractice and wrongdoing. Physicians need to develop techniques and skills that enhance the patient- physician relationship and promote clientele satisfaction based on honesty and prudence [8]. The doctor-patient relationship has deteriorated because of various factors. Doctors have become business oriented, state run hospitals have huge numbers of patients, patients are now more assertive and aware, and doctors in general are perceived to be less compassionate and understanding [9].

Complaints in Military Medicare

Complaints are received in large numbers every year both from service personnel (or their kin) and ex-servicemen (ESM). Once a complaint is received, it is forwarded for investigation to the Commandant of respective MH through the medical channel. The detailed investigation report along with remarks is analysed in the Medical Directorate and remarks of Senior Consultant / Consultant of the concerned speciality may be endorsed. If required, necessary action is taken against the erring persons and a suitable reply is given to the initiating office and /or to the complainant.

Type of Complaints

The common complaints received are:-

- (a) **Bureaucratic :** Refusal to admit patient despite having entitlement card, refusal/delay in seeking specialist / super specialist opinion from civil, refusal to process reimbursement of expenditure in civil/private hospital, failure to hold departmental inquiry in death due to unnatural causes and delay in settlement of claims.
- (b) **Local Administrative:** Non-availability of sufficient staff, non-availability of serviceable equipment, inadequate sample collection facilities for outstation patients, non-availability of suitable ambulance/vehicle for carrying patients and faulty hospital services/equipments/buildings causing injury.
- (c) **Behavioural:** Failure to inform death/sudden change in patients illness to next of kin (NOK) in reasonable time, refusal of permission to NOK for being near a terminal case, providing incomplete information regarding medication/diagnosis/investigation, not listening to the complaints of patients/kin, having no policy for pinpointing responsibility in negligence and informing death to NOK, refusal of first aid (resuscitation) in an emergency, rude behaviour and instigation.
- (d) **Negligence:** Failure to call medical officer(MO) by the staff, delay/incorrect/failed line of treatment, refusal for surgery/repeated delays in conducting surgery, delay in conducting caesarean section, refusal/delay in transferring patient, provision of incomplete medication, delivery of drug by incorrect route, using expired drugs or vaccines and side effects or complications arising during treatment.

(e) Multiple Factors

Court Cases

Suits may be filed in various courts, consumer redressal forum and National Human Rights Commission. Till date, all cases filed in the State Consumer Redressal Forum have been dismissed because military hospitals are not providing treatment on the basis of payment. With the introduction of Ex-servicemen Contributory Health Scheme (ECHS), members would have to pay one time contribution. If a petition is filed by a member of the ECHS in a State Consumer Disputes Redressal Forum, the forum may not dismiss the case as there is a similarity between ECHS and medical insurance since a financial contract between service provider and the patient is involved. By the end of 2003, the medical directorate was defending a number of cases of alleged medical negligence whose details are given in Table 1.

Table 1**Types of medical negligence cases being defended**

Types of cases	Percentage
(a) Surgical Cases	37.0
(i) Failed surgery	14.8
(ii) Failed tubectomy	7.4
(iii) Gauze piece left during laprotomy	7.4
(iv) Burns due to electric blanket in OT	3.7
(v) Post operative blood transfusion reaction	3.7
(b) Medical cases (including rupture due to endoscopy, paralysis due to vaccine)	22.2
(c) Incorrect laboratory report of HIV status	3.7
(d) Declaring person alcoholic	3.7
(e) Refusal of hospital admission to ESM (Subsequent refusal for reimbursement)	7.4
(f) Pension claim for earlier negligent treatment	7.4
(g) Reimbursement of medical expenditure	14.8
(h) Faulty design of ward toilet resulting in death	3.7

Precautions against Negligence

We need to understand that the patient of the 21st century is more aware, wants information and explanation, and demands a more active role in deciding the treatment. We have to be compassionate, humane, understanding and pay more attention to our patients than we do at the moment. The following levels of actions may be helpful in avoiding cases of negligence:

- (a) **Change of Attitude:** Polite, courteous and motivated staff with a positive attitude, patient friendly bureaucracy, no delay in treatment of emergency cases and administrators have to be proactive in the patient care.
- (b) **Good Communication:** Listening to grievances at discharge drills, establishing help lines for aged, proper explanation to seriously sick/NOK by the treating doctor, debriefing NOK of death cases, clientele satisfaction meetings, insist on postmortem (PM) or take unwillingness certificate if it is not done. Ensure presence of female attendant while examining lady patients. Senior Advisor to critically read and comment on fatal documents. In unusual deaths, where NOK have not given permission for PM, implication of same should be noted and to take all complaints seriously with an aim of resolving them by patient hearing and taking appropriate remedial action.
- (c) **Proper Record Keeping :** Proper records of history, examination, investigation , treatment given, consent for various procedures (including refusals) and any expert opinion taken, should be maintained.

Do not try to manipulate the records [10]. In cases of unusual death order a departmental enquiry. In case of staff Court of Inquiry (COI), insist on a medical member who must ensure that the truth appears and gives dissent note, if required. Do not destroy case sheets/fatal documents of unnatural death, medico legal and complaint cases. Special care should be taken in cases of injuries, uncertain diagnosis, terminal cases etc. Specialists must endorse comments once the case is seen.

- (d) **Administrative Aspects:** Handling court cases with utmost care by a responsible officer, preparation of counter affidavit in close liaison with the Government Counsel, ensuring that a responsible representative is present in the court on the date of hearing along with Government Counsel and taking prompt action as per court directions after seeking legal opinion.

Conclusion

Good communication skill to build a rapport with the patient is the key to avoid majority of the complaints. Records must be maintained scrupulously. The best way to avoid legal cases is by having grievance redressal forum and medicolegal cells, preferably in the hospital premises, so that the problem is nipped in the bud.

Conflicts of Interest

None identified

References

- Potdar RD. Consumer protection law and paediatrician. Indian Paediatrics 1997; 34: 283-6.
- Tiwari SK, Baldwa M. Medical Negligence. Indian Paediatrics 2001; 38: 488-95.
- Sharma RK; Gupta S. Medical negligence - A review. Annals of the National Academy of Medical Sciences 1997; 33: 241-8.
- Hickson GB, Pichert JW, Federspiel CF. Development of an early identification and response model of malpractice prevention. Law and Contemporary Problems 1997; 60:7.
- Jhabvala NH. Indian Penal Code 13th ed. Mumbai: C Jamnadas and Co, 1997.
- Sharma RK, Bhardwaj DN. Apex Court rules: doctor's error of judgment not criminal. Indian Practitioner 2005; 58: 225-6.
- Mehta L. SC Ruling: A shot in the arm for doctors. Courage 2005; 1:20-31.
- Roy PK. To err is human, negligence is sin. Medical Journal Armed Forces India 2001; 57: 326-8.
- Pandya SK. Doctor-patient relationship: The importance of the patient's perceptions. J Postgrad Med 2001; 47:3-7.
- Tiwari SK. Legal aspects in medical practice. Indian Pediatr 2000; 37: 961-6.