



IMPORTANCE & AWARENESS OF MEDICO LEGAL ISSUES IN DENTAL PRACTICE. ALARM CALL

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ABSTRACT

Dental Medicine is a noble profession but the dentist-patient relationship has transformed over the last two decades by upsurge anxiety in the community and dental profession regarding increasing trends of complaints and lawsuits against dentists. Knowledge about ethics and medicolegal issues is fundamental to the dental practice as clinical skills. While providing the oral healthcare services, a dentist should follow certain protocol to avoid any litigation in the name of malpractice. Consent is a fundamental and established principle in the Indian Law.

Professional indemnity insurance also known as 'Defense Costs' will pay all the costs, fees, and expenses incurred with their prior consent in the investigation, defense, or settlement of any claim made against the insured.

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INTRODUCTION

Medical profession is considered as a most virtuous profession all over the world. Its sole objective is accomplishment of the quality of the life and alleviation of sickness and suffering. It is not a mathematical process but a service-oriented freethinking profession having a self regulating code of ethics^{11,20}. The alliance between the doctor and patient is based on faith and confidence. Fortunate are the doctors of the past who were treated like God and were respected by the people. Today, we observe a rapid pace of commercialization and globalization in all the spheres of life and the medical / dental profession is no exemption to this actuality.^{23,13}

Vigorous national economic growth, rising family incomes, better socio-economic environment in private sector have all made healthcare a fast growing private sector and leading to increased health awareness among the urban people in comparison to the rural people with the upsurge demand for excellence in medical and dental healthcare services at affordable costs.^{1,2,3} Despite all this, cases of medical and dental treatment negligence do happen, and there still remains a big void when it comes to deal with dental cases and provide appropriate reimbursement to the patient due to lack of a full-bodied dental indemnity insurance policies in India.^{15,17,18}

In prehistoric era in Egypt, practice of medicine was subjected to legal restrictions. Practice of medicine was restricted to members of a certain class, and all doctors had to learn from their predecessors. Obviously, this was to protect the public from quackery.

Fees for the doctors were paid by the State. If disappointing results occurred during the course of a treatment, the doctor responsible was liable to punishment, which could be very harsh. Similar legal restrictions on medical practice were also found in other early civilizations such as Babylon and India.¹⁶

DISCUSSION

Indian general public is experiencing a growing wakefulness regarding patient's rights. This development is certainly visible from the recent spurt in proceedings concerning medical / dental professional or establishment liability, claiming for medical negligence, vitiated consent, and breach of confidentiality arising out of the doctor-patient relationship. With the inclusion of health care services under Consumer Protection Act, a surge in lawsuit arising out of breach in medical/dental profession is obvious. Thus, today it becomes very important and crucial for health care workers who should be conscious, alert and attentive of such laws.^{4,5,12}

Medical ethics inspect ethical matters arising in medicine and healthcare provision by applying the principles of moral philosophy. Medical ethics are often defined as "the disciplined study of morality in medicine"¹In up to date every day practice, medical specialists and the dentists come across regular ethical issues like doctor-patient relationship, patient's confidentiality, and the need to obtain informed consent, whereas bioethics deals with all-encompassing moral issues in medicine and biomedical sciences.² Medical ethics perform as a "bridge" between theoretical bioethics and the bedside with the main aim is to improve the quality of patient care by identifying, analyzing, and attempting to resolve the ethical problems that arise in practice.^{17,19}

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Civic consciousness of medical and dental carelessness and slackness in India is growing which is causing upsurge in complaints regarding facilities, standards of professional skill and suitability of therapeutic and diagnostic methods. Negligence can occur in any aspect of proficient practice, whether history taking, advice, examination, testing or failing to test, reporting and acting on results of tests, or treatment. The standard is one of realistic care, not of excellence. The court will decide having gazed at to all the circumstances whether the health expert has been negligent. Negligence is different from mistake or error of judgment.⁵ Nowadays medical and dental practitioners should have knowledge of the law leading the practice of medicine because they both share same platform and go hand in hand. The drift in recent years toward codifying individual rights and liberty has clean down to the relationship between doctors and patients.²¹ In today's scenario when we go through the dental and medical curriculum in India, there is more weight in developing the technical aspects and skills, but it lacks in ethical facet. The fresh mounting inclination of legal action against doctors is an issue of supreme concern which damages the esteem of white collar job by media (electronic and print), certified accountability and decision making.³⁰

Consent in Dentistry

Consent has produced a vital part of patient treatment and management. The concept of informed consent arises from the fundamental ethical principle of autonomy and rights of self-determination. The core idea of autonomy is one's action and decisions are one's own.^{8,25} It is a universally recognized, essential indispensable safeguard tool for standard ethical practice and helps in allocation in a row with patients that is vital to their ability to make lucid choices among multiple options in their alleged best interest.^{3,4} Consent in dentistry follows the same basic principles as in other regulation of medicine. Usually there are a number of different choices available to a patient and all of these should be discussed with the patient and oral health professional must explain the proposed treatment to the patient, the risks involved, and the possibility of any alternative treatment and ensure that appropriate consent is obtained.⁵

Various studies have been reported regarding the awareness and importance of consent from patients in dental practice. Additionally, the growing patient population is becoming more conversant and alert of their rights, as a result taking action by contacting the consumer forum to lodge their complaints.⁶ Gupta VV et al and Kumrai H et al have reported a lack of knowledge in dentists about informed consent and its importance in medico legal issues. They have also emphasised that training on legal jurisprudence and legal medicine is necessary for dentists to guard themselves from civil or criminal proceedings.^{2,12} Singh et al through their study stated that awareness of consumer protection act was higher among medical professionals as compared to dental professionals because they deal more with medical slackness cases. However Oral Surgery and Fixed Prosthodontics are the most vulnerable clinical dental services involved in the claims.⁷

Sikk M et al stated that large number of dentists were knowing about Consumer protection act, but the basic awareness about rules and regulations was found to be low. They also observed that taking consent with written contract was not followed routinely, showing a lack of concern among the

professionals.¹⁸ Hri priy et al Senthil Kumr S et al through their studies inferred that there is an urgent need to update medical and dental health care professionals regarding medicolegal issues and consumer protection act to be on safer side legally.^{19,21} Sumanth Prasad et al reported in their study that MDS faculty dental professionals have more awareness of consumer protection act compared to other dental professionals.²⁴

Ashish Vashist et al and Lingam Amara Swapna et al emphasized that there is the need for maintaining the records officially and professionally to protect against any commercial, legal and medico-legal litigation. Written records, including medical and dental history, chart notes, radiographs, photographs, and models are the only existing guiding principles, which are important in a negligent lawsuit and must be carefully kept. All records must be of that period and must be signed and dated. Legally, dentist written records carry more weight than the patient's recollections.^{22,26} The NHS Terms of Service, state that dental records should be kept for a period of two years. Since a claim for negligence could happen many years after the event, and that retention of records for the minimum of two years is inadequate, defense organizations suggest that records be kept permanently. This is often impossible due to space constraints and so the advice given by defense organization is as follows^{9,10}

1. Treatment Records, X-rays, Study Models, and Correspondence is to be retained for 11 years after the completion of treatment
2. For children, retention of records until the patient is 25 years old
3. Orthodontic Models - retain the original pre- and postoperative models permanently, discard any intermediates after a period of five years.

The endorsement of the Consumer Protection Act, 1986, is a landmark in the history of socio-economic legislation in India. The Act has considerably merge the process of consumer protection and has given rise to new consumer jurisprudence during the past few years.²⁴ The Supreme Court also consider that negligence in context of the health profession necessarily entitle for a special perspective like simple lack of care, an error of judgment, or an accident, is not proof of negligence on part of the health professional as long as doctor follows a practice acceptable to the profession of that day in the region, she/he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available.¹⁴ Provisions for consent under law comes in Sections 87 to 91, Indian Penal Code (IPC) deals with consent. Section 88, IPC, lay down that an act is not offence, if it is not likely to cause death. Persons who are not qualified in medical/dental profession are not allowed to take the plea of this section, as they are not said to do the act in good faith. Barring physical examination, any medical/ dental procedure requires written consent should refer to one specific procedure and not blanket permission. Prisoners and persons released on bail can be treated without their consent in the interest of justice of society. However, consent of the patient cannot be defense to medical or dental practitioner in negligence.²⁷ Kriti Goel et al summarized some of the non-negligent acts:⁵

1. Not obtaining a consent form in an emergency is not negligent.

2. Patient's dissatisfaction with the progress of treatment cannot be called negligence.
3. Not getting desired relief is not negligence.
4. Charging, what the patient thinks is exorbitant is not negligence.
5. When patient does not follow advice of the doctor and does not get satisfactory results, dentist cannot be held negligent
6. What should a dentist do in case of alleged negligence.^{5,9}

When something untoward happens following a diagnostic or therapeutic procedure, or when a patient or relative makes a complaint, the dentist must take appropriate steps, some of which may be:

1. Complete the patient's record and recheck the written notes.
2. Be frank enough and inform clearly of the mishap. Show your genuine concern. Answer all the queries of patient / relative and do not mind their repeated questioning, harsh attitude and at times even abusive language. Doctors who are open-minded and communicative are much less likely to be complained against as patients / attendants are extremely forgiving of errors made by a friendly and concerned medical attendant. A high proportion of complaints are precipitated or escalated into legal action by a progressive breakdown of the doctor-patient communication.
3. After these initial responses, the dentist should contact some other doctor / protection organization to seek advice. The Dental Associations can form groups / cells to advise and assist in such situations.

Importance of Dental Indemnity

It is becoming legally and financially hazardous to treat patients with complex diseases for whom the outcome is uncertain and imperfect results are common. The law suits are not only steadily increasing in number and cost, but are demonstrably put at risk the cure of the patient. The litigious atmosphere has led to a practice called 'Defensive Medicine'.²⁸ Considering the facts it's vital that the grassland of dental indemnity insurance must evolve in India to bank the interests of both patients as well making dentist more accountable while delivering their services. It's high time to create dental negligence awareness among the general population which helps them to report such events and ask for claims which in turn will craft the demand for dental indemnity insurance.^{13,15}

The insurance cover applies to insurance relating to errors and omissions on the part of a professional while rendering services. All claims relating to compensations are dealt in a court of law. Like any other healthcare field, dental practitioners are also under the obligation to comply with the laws of the country they practice. However, in the best of hands and without negligence complications sometimes can and do occur. Complications that occur in the presence of good planning and communication and are managed appropriately do not amount to negligence, and are unlikely to lead to a successful claim.²⁹ With the prop up of the Ministry Of Health Government, Dental council of India should make it compulsory for all the dental graduates to have a official and legal dental indemnity insurance policy prior they get registered to their state dental council. The government should

cover all its dental employees associated with treating the patients and special benches should be set up in the courts for dealing with dental/medical indemnity matters for speedy justice.¹⁵

CONCLUSION

Mistakes occur in every profession, as it does in life. But unfortunately, in the health profession mistakes can't be forgiven and thus can result in serious consequences for the patient and, in turn, lead to the doctor/dentist being made answerable. It is concluded that the legal process is difficult and distressing to navigate, so it is best to avoid this when possible. A dental practitioner needs the help of a competent legal representative who specializes in such litigation. The maintenance of dental records to be produced as a evidence in the consumer court is critical in the event of a malpractice and dental insurance claim.

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