

# How to Avoid Litigations in Medical Practice

## DEALING WITH UNEXPECTED DEATH IN MEDICAL PRACTICE

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Nothing causes more panic in medical fraternity than a sudden and unexpected death and nothing can be more challenging than handling situation arising out of sudden death.

Sudden unexplained death is defined as instantaneous, unexpected death without any warning and not caused by violence. In medical scenario a death occurring during the course of treatment when it is most unexpected is sudden death. You may encounter Sudden Death while sitting in OPD or you may face with admitted patients in ward or OT.

### **You are sitting in OPD and people rush in with a dead patient.**

Not an unusual situation encountered by physicians, nursing homes and hospitals. The dilemma faced by attending physician is what to do in such cases. The doctor has to see the patient anyway and declare death. The question arises as to death certificate, cause of death, and information to the police and what records to keep. These are the few suggestions that may help attending doctor in such situation.

1. Always attend the brought dead patient. Do not delegate the responsibility to nursing staff of someone else.
2. Write down the history given by the relatives at verbatim.
3. Record at least two identification marks of the dead body.
4. Declared the death after careful examination and auscultations for at least 5 minutes, if possible record ECG.
5. Prepare an OPD case paper with date and timing of arrival of the deceased. Put in details the names of accompanying persons, their relations with the deceased, and at least two identification marks of each of them and take their signatures. Have two witnesses with you to sign, preferably other bystanders or relatives

of the deceased. Avoid your own staff as witness.

6. In case of suspicion, do not hesitate to inform police and ask them to take necessary action. It's of utmost importance. Even if relatives are reluctant, inform the police and record time and mode of informing the Police.
7. In case the deceased is known and under your treatment for a terminal illness, you may give death certificate.
8. Keep your OPD record carefully. The investigating officer may ask for a copy or you may have to attend court as witness in case of eventuality.

### **Death in Ward or Room During the Course of Treatment**

Such death is usually postoperative or due to unexpected turn in the health of a patient being treated in ward or room. Such death usually happens to be unattended by treating physician and nursing staff and is witnessed by the attendant of the deceased. Sudden death itself constitutes a shock to the family. It is equally shocking to the treating doctor. Treating doctor or nursing staff on the site with whatever available resources usually makes intense efforts. This is the time when certain deficiencies are noticed by the bystanders or the relatives of the deceased. Usually, there is shouting, loud orders by the doctors, commotion and lot of hurry and worry in the body language of all those who are trying to resuscitate the ailing patient. This all is witnessed by relatives of the patient and when death is declared, the efforts go unnoticed and this is only the deficiencies that are pointed out.

*The gravity of the situation can be diluted by:*

1. Keeping all-resuscitative measures ready all 24 hours. They include emergency drug tray with drugs within expiry date. Resuscitation equipments, oxygen cylinder, tubes, etc.

2. All the relatives and bystanders must be asked politely to leave the ward or room.
3. Informing the seriousness of the health and assurance that all measures are being taken to revive the patient. High-risk consents, informed consent and dissent need to be recorded in writing on case papers in signed by relatives and the witness.
4. Breaking the sad news in a highly polite and dignified way. By dignified way means doctor is not supposed to show extreme emotions like crying in front of the relatives. The doctor must keep his composure and show confidence. He must share sorrow with the relatives but only professionally. This may appear odd to begin with but one must remember the more extreme emotions you show the relatives become more suspicious.

After the death is declared, all the responsible relatives must be called upon for sharing information. At this point remember to call out only responsible relatives and talk to them in a separate room preferably your consulting room. The relatives must be taken into confidence, the situation explained and if cause of death is obvious, it must be explained properly. If there is doubt as to cause of death, clinical postmortem examination must be done. It takes a lot of efforts to convince the relatives about the necessity of postmortem but it is worth taking the efforts than to land in trouble later on. If you feel postmortem is a must and relatives are not giving consent, you can take help of the police and get it done.

### **Death in Operation Theatre or Postoperative Recovery Room**

This again is a very difficult situation particularly in elective operations. Majority of the times the patient enters OT in good physical and mental condition and relatives are assured of a good outcome. Attendants are not mentally prepared to face a situation where they receive a bad news that their loved one is no more.

#### *Reactions of Relatives in Such Situations.*

- Anger and anguish.
- Demanding immediate explanation from doctor.
- Verbal and physical abuse and immediate retaliation with destruction of property.
- Lodge a police complaint and Insist on arrest of the doctor.
- Invite the media to spread the news.
- Demand for money.

These situations are to be dealt with tact as per circumstances.

Following are few suggestions.

#### **What you shouldn't do.**

- Do not run away from the situation. It will only make the things worse.
- Do not try to cover up and unnecessary explanations. One should keep his nerves, take a break for few minutes after exhaustive resuscitative efforts have failed, organize the things in OT, pool all the empty vials used during resuscitate measures, take a look at the papers and take them into your custody, (this is to prevent unauthorized copying of the papers without knowledge of anybody). Later on, one should call only the responsible relatives separately into the counselling or consulting room and explain the situation
- Do not try to settle the matter by political or financial means- this is the most common practice adopted by doctors but these should be avoided as they set precedence to future mischief.
- Fight the situation overconfidently- this one should not do even when the body language. Dismissing the relatives and not given proper explanation will aggravate the situation.
- Do not retaliate with anger. The relatives may abuse in any language you cannot reply in the same language. This increases the tension in the atmosphere and temperature starts running very high.

#### **What you should do.**

- Call the colleagues and seniors for help- this probably works more than anything else. Prepare a task force on local level like branches of IMA/DMA. Make a system to send SOS to all colleagues in vicinity. All senior colleagues should rush to the troubled spot at the shortest notice. This diffuses the situation very fast. There are many persons in the mob who happened to be patient of one of the other doctor and such senior consultant can diffuse the situation and mediate on behalf of the treating doctor.
- Discuss the problem with colleagues who have come into help and prepare a logical sequence of events
- If the situation is going out of the hand, call the police.
- No repeated explanatory statements to be made in front of different people who demand

explanation.

- Involve only the responsible person for the aggrieved family.
- Be a patient listener to the allegations and abuses.
- Take time to prepare the case paper and put proper notes. Case papers do not showing any entry of vital parameters makes court to conclude the monitoring was not done.
- In case cause of death can be given, certify the death
- Ideally postmortem is a must.

### **Breaking The News**

Breaking the bad news is to be handled very carefully. Each case deserves to be handled by its merits. The various ways in which a bad news can be broken are:

- Immediate- sometime it is necessary to declare death immediately. This method has both its pros and cons. It can bring around immediate violent reaction. Sometimes immediate declaration reflects transparency and relatives do not grumble much. This all is circumstantial and doctor has to use his utmost management skills
- Wear empathetic, sympathetic attitude and observing courteousness in communication while explaining SUD to relatives
- After cover up- cover up does not mean manipulations. The procedure of keeping the patient on artificial means and pretending to be alive does not work in true sense. It is common practice to keep the patient on ventilator and breaking the news slowly after intensifying the situation step-by-step. The problem here is many of the bystanders and witnessing relatives happen to have realized that the things have gone wrong. They feel that extension and pretensions are drama for other causes and then they retaliate.
- May be done by another person like a staff or hospital manager - this probable is the simplest way but sometimes agitated relatives are not happy and they want a direct interaction with doctor
- Warn doctors and staff members to be careful to loose talk.
- After asking all the responsible relatives to gather and then explain in presence of colleagues. This probably is the safest way to break the news. This should be done preferable

in your own consulting room. Remember that your consulting room is the most comfortable place for such thing. You happen to be the most powerful in your own consulting room. Sit comfortably on your chair, ask your colleagues to set by your side and ask the relative to sit across the table this creates a wall of power between you and the relatives and keeps you safe. Never go directly into the mob and start giving explanation, this may precipitate direct manhandling.

### **Medico legal Aspects of Sudden Death**

- Sudden death is treated as an accidental death and it requires a very high degree of negligence to prove that it was caused by negligent and rash, act.
- It is cognizable and bailable offence. Bail can be granted by the investigating officer, no court is needed.
- On request of the doctor, custody of the human remains in taken by the police and shifted for postmortem.
- The investigating officer can demand copies of all documents and charts related to the case. It is not necessary to provide that immediately you can ask for some time complete the paper to the last detail and provide the officer with Xerox copies. In fact never handover original paper to the authorities. You may lose your defense forever.

*Other legal actions, a doctor can face after such mishap are:*

- Actions under Consumer Protection Act
  - Action in Civil Court for compensation.
- Both these issues have been dealt in previous issues of DMA bulletins but here its pertinent to mention that, the honorable Supreme Court has said that Consumer Court or Civil Court should not admit a case against doctor immediately. Instead the courts should serve notice to the concerned doctor and ask for explanation or expert opinion from competent medical board. If not satisfied with the reply or on the recommendation of the competent board, the court may proceed to admit a complaint.

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