

How to Avoid Litigations in Medical Practice

DEFENDING MEDICO-LEGAL CASES IN CONSUMER COURTS



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In previous two bulletins, we discussed the Consumer Protection Act, its impact on medical professions and the mechanism of awarding compensation in cases of medical negligence. In this issue, we will discuss how to defend a case in Consumer courts.

The number of cases filed in Consumer Courts are far more than filed with State medical council. Basic difference between working of Consumer Courts and State Medical Council is that, in Consumer courts the judgements are given by the Judge and members who are mostly non-medicos and whether to take an expert medical opinion or not is entirely their discretion, as against State Medical Council, which is primarily manned by Medical experts only. Secondly, Consumer Courts award monetary compensation to the aggrieved party, whereas state medical council have power to remove name of doctors from register in case of medical negligence.

Earlier, there was no fee to file a complaint in consumer forum, but after the amendment in CPA, in 2003, there is minimal fee, as compared to civil court fee. In the civil court too, fee is 10 percent of the amount asked for compensation. Maximum penalty for filing frivolous complaint in Consumer Court is just Rs 10 thousands

There is no need of a lawyer, to file or fight the case in consumer forum.

Under CPA, a judgment is to be expected within 90 days of filing the case. But usual time taken is much more due large number of cases and inadequate staff and infrastructure in many Consumer Courts.

Large number of patients are filing complaints directly to police. This is commonly seen in cases of sudden death and serious patients. Therefore, it's important, to make sure that case paper should be completed before declaring death or shifting a serious patient to another hospital, as the case records will be taken away by police.

Laws every doctor must be aware of ...

The best defence in cases will be the observations of Supreme Court in *Jacob Mathews vs State of Punjab and Anr.* 2005 (3)CPR 70 SC. This case not only defines the medical negligence but also differentiates civil medical negligence from criminal medical negligence. These observations are the best defence in case of a negligence suit. For details of the principals of medical negligence please refer to DMA bulletin issue dated 10th May 2018 Volume 03.

Others are

Martin F. D'Souza v. Mohd. Ishfaq civil Appeal No 3541 of 2002 (

no doctor can give 100% guarantee)

Section 80 of IPC which defines accident

MCI Code of Ethics Regulation 2002

There are lots of acts and laws related to medical professions. Every doctor must be familiar with them and should follow them.

General Precautions. 'A Stitch in time Saves Nine'

- Every doctor must have **professional indemnity insurance** of sufficient amount. The minimum amount should be 20 lakhs for physicians and 50 lakhs for surgeons. Those who are having nursing homes must opt for "Hospital Error and Omission Policy". These two are different policies, the first one will take care of professional negligence and second policy will take care of deficiency of service.
- Proper and regular communication** between doctor and patient is most crucial factor for safe practice. It has to be regular during each stage of the treatment, not only when the patient is serious.
- Maintaining proper records** at each and every stage of patient's care is vital.
- Patient's **informed consent** should always be taken. Consent for admission, surgical procedure, extended surgical procedure, anesthesia, blood transfusion should be separate and taken before actual procedures. For details of informed consent please refer to DMA bulletin dated 25th April 2018 Volume 02.
- All necessary **equipments in hospitals must be in working condition**. One must maintain the record of servicing of these instruments and gadgets.
- Do not exceed the scope of treatment** in terms of professional capacity or facilities available. Do not refer to specialist or higher centre whenever needed.
- Do not display unrecognised degrees.
- Follow all guidelines in issuing medical certificates.

Time limit to file case

As per CPA the time limit is two years from the incidence, but the judge has power to condone the delay. It is important for us to know that obstetrician and paediatrician should keep case paper of patient for minimum period of 21 years (18-Age of achieving majority and two years time limit).

Documents should also be preserved in all those cases with mortality, cases with unusual complication or cases where relatives/patient seems unsatisfied.

How to Suspect Litigant Patient?

Every patient should be seen as a potential litigant. But this thought should be taken in a positive sense, to manage all case carefully with proper protocols and standard practice. This thought should not be the basis of starting defensive medicine. The possibility of litigation is very high in cases with unexpected results or unusual complications, but cases with expected outcome are also not immune to litigations

Sometimes over enthusiastic patient can be misinformed by their well-wishers and lodge a complaint when there is no damage also. It is important, therefore, that our attitude to all patients should be same and thoroughly professional.

Once you receive a LEGAL NOTICE

- ⌚ In most of the cases patient/relations consult their lawyer or some known doctors friend or relative before filing a complaint. Chances of litigations are high where patient/relative has lawyer or doctor in family.
- ⌚ The patient or his lawyer can file direct case in consumer forum and doctor will receive a notice from consumer forum.
- ⌚ Patient can also send a notice through a lawyer or a by himself.
- ⌚ Patient can send notice by just an ordinary letter, speedpost, registered post, courier or any other means. Please remember the mode of sending notice is not important. Usual tendency is that if a letter is by registered or speed post, then it is given importance and if it is received by an ordinary post its ignored. Every notice irrespective of mode of sending must be taken equally seriously.
- ⌚ Once you receive the notice, make sure to preserve both notice paper and the envelope. Write date and time on both envelope as well as on the notice page.
- ⌚ The notice may be addressed to the doctor or it may be on the name of hospital. If it is in name of hospital, then also doctor is responsible if he is part of treating team.
- ⌚ Collect all the materials related to the said case. Arrange it in a chronological order and go through it to revise the case.

Persons you may need to fight your case...

1. Insurance Company's Branch Manager
2. Expert witness
3. Medico Legal Consultant
4. Lawyer

Insurance Company

Once you receive written notice from complainant, inform your Insurance Company's Branch Manager. In a letter addressed to the Branch Manager, attach the photocopy of the letter that you have received from the patient and photocopy of the first page of your indemnity insurance policy.

There is no need of writing anything in detail about the patient's treatment or your reply to the notice. It is sufficient just to deny the same.

Take acknowledgement on the photocopy of the letter and preserve it carefully along with the other case papers.

It is the Branch Manager of that insurance company, who is the

sole responsible person and he should advise you by a written reply. Your agent has no authority of any sort to advise you. Do not settle for verbal communication, take everything in writing.

Expert Witness

Opinion of an Expert witness is of immense value in making your case strong.

Select an expert witness from your area, where you are practicing. If you have Government medical college nearby, then select a person from that college.

If there is no Government medical or any other medical college, then preferably select a senior specialist from that area.

An expert opinion is given in an affidavit format. Sworn statement and expert may be called to court or forum to give evidence and should be available for cross-examination.

Medico-Legal Consultant

It is advisable to consult a medicolegal person, in preparing your written reply. Lawyers do not have detailed medical knowledge so guidance of a medico legal consultant is very important. Remember, your first written statement is the foundation of the case and ultimate fate will be dependent on this to a large extent.

Lawyer

Select lawyer carefully. Choose one who has been taking cases of medical litigations. Choose lawyer working in Consumer Court, Civil Court or Criminal Courts as the case may be. Under CPA lawyers can represent you in consumer forum. Your physical presence is not mandatory. But its highly desirable that you attend all cases and keep a close watch over progress.

How to proceed

- ⌚ Once you have selected a Medico legal and a Lawyer explain the case to them and handover the notice for reply.
- ⌚ The lawyer will draft a reply. It is not mandatory to reply to patient's notice or his lawyer's notice however, it is advisable to reply to the notice within stipulated time.
- ⌚ In your reply restrict yourself in denying allegation and charges made in the notice. It is observed many a times that if you give detailed reply to the notice, a smart prosecution lawyer will pick-up your weak points from the reply and accordingly he will file the plaint (a complaint to the court).
- ⌚ The reply to legal notice is the foundation of your defense. Therefore, without disclosing controversial points and using proper words and not committing or not admitting your errors or mistakes reply should be drafted. One has to remember that your reply to notice should reach the complainant or his lawyers within given time
- ⌚ You had informed branch manager of an insurance company and he had given you the lawyer of your choice, with the approval of his company, then also you must keep them informing at every stage and ask for the reimbursement of lawyers charges at every stage.

Once Case is Filed in Consumer Court.

If the complainant has decided to file complaint under Consumer Protection Act. 1986 (CPA) complainant can demand the damage in his notice, depending upon the amount

of the same, complaint will be filed in District Forum, if it is less than 20 lakhs; in the State Commission, if it is less than 1 crore and if it is more than 1 crore than in the National Consumer Redressal Commission. This figure may change soon with proposed figure for upto Rs 1 crore, 1 Crore to 5 crores and above 5 crore for District, State and National Consumer Courts respectively.

Doctor or Hospital will get a complaint from that particular forum and **reply has to be filed within 30 days of receipt of the notice**. Here again one must preserve complaint and the envelope and write date and time, on both. One can get only one extension of date, i.e. for 15 days. That means, in any case, reply to the complaint in writing has to be filed in maximum 45 days. If one fails to comply with this, then forum might take a decision, "Ex Parte" that means without considering your defense. Forum will be decided on the complainant's complaint alone, in your absence.

After the discussion and in the line with the reply sent earlier to the legal notice, prepare a draft reply. Then go to the lawyer and give your draft reply and then let him prepare a final reply along with you and your medicolegal consultant.

After the amendments in CPA, **it is not necessary that all complaints will be admitted**. Along with your written statement one must give expert witness opinion and all possible medical references of the case, along with written statement to support your line of management.

While **selecting references**, first choice should be Textbooks of Indian authors, next will be textbooks of foreign authors. Third comes journals. References from internet are given the least importance

Whatever documents, references or expert opinion you want to provide, **do it at this stage only**. If the case is lost and goes in favour of complainant and if defendant wants to go for an appeal, please keep in mind, in appellate forum only argument will take place and no new evidence will be accepted in any form.

Your complainant, after receiving written statement, may send rejoinder. **In that rejoinder complainant is not allowed to bring new issues**, if he does so defendant must bring it to notice of forum.

When the judgment comes in favour of doctor and complainant does not go for an appeal the litigation is over. If judgment goes against doctor and he wants to go for an appeal, then the litigation will go further. Under CPA, **one can appeal only twice** so at the end of two appeals from either side litigation will be over.

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Ps. soon will start articles on medico-legal cases pertaining to various specialties. If you have any query related to your specialty please mail it to thearungupta1@gmail.com or whatsapp on 9811106056

सत्येन्द्र जैन
Satyendar Jain

स्वास्थ्य, उद्योग, लोक निर्माण, ऊर्जा, गृह,
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D.O. No. mihhealth/4379
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APPEAL

APPEAL FROM THE HON'BLE HEALTH MINISTER OF DELHI FOR PUBLICATION IN DMA BULLETIN

Dear Doctor,

I wish to extend my sincere thanks to every member of DMA and IMA for the wholehearted support in polio eradication efforts over the years.

Government of India has postponed the 1st July 2018 and 9th September 2018 rounds of the Intensified Pulse Polio Immunization Programme (IPPIP) 2018-19 to **5th August 2018 and 18th November 2018 (Both Sunday)**. Each round will be followed by five days of house to house "search and immunize" activity for immunizing children below five year of age. The Government looks forward to increased participation of private/voluntary sector in the programme. I earnestly appeal to all of you to participate actively in the programme of polio eradication by organizing:

1. Polio Immunization booths at your Clinics/ Nursing Homes on the above-mentioned dates.
2. Advocacy with parents, community leaders, Resident Welfare Associations (RWAs).
3. Display publicity material at your clinics/ nursing homes.

Govt. of Delhi will provide all vaccines, logistics and publicity materials.

For any assistance/ clarification, DMA/IMA may coordinate with Dr. Anil Jagrat, OSD PPIP, Directorate of Family Welfare, Vikas Bhawan-II, 7th Floor, B & C Wing, Near Metcalf House, Civil Lines, Delhi-110054. Tel. No. 23813210.

With regards,

Yours sincerely,

(Satyendar Jain)