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Medico Legal Cases Demeanor W.S.R To Patient's History, Precautions In Advising Investigations And Diagnostic Procedures

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Abstract

In Medicine, a patient's history is an essential tool in patient management. Most of the decisions and actions taken by the treating doctor are based on the patient's history. Obviously, any delay or error in taking the complete, correct, and relevant history will have adverse consequences on the patient's diagnosis and consequent treatment. A patient's history is, therefore, significant in legal proceedings also. Investigations and diagnostic procedures are an integral part of Medicine. They help doctors arrive at the correct diagnosis and make crucial decisions. Unfortunately, even this aspect is now emerging as a potential area of Medico-legal problems for doctors.

The assemblage in this article is a reference tool on the legal aspects of the patient's history from the viewpoint of the treating doctor. Law is discussed from a doctor's perspective to make him or her understand important characteristics of the law relating to the patient's history and also to make him/her comprehend the imperative distinctiveness of the law relating to advising investigations and its relevance and applicability to medical practice.

Keywords: Medico-legal: Patient's history: Investigations: Diagnostic procedures

Preamble

The medical profession has its own ethical parameters and law of conduct; still, negligence by health service providers has to be determined by judges who are not trained in medical wisdom. They calculate based on experts' opinions and decide based on introductory principles of reasonableness and prudence. There is frequently a thin dividing line between the three situations of negligence; gross neglect, ordinary neglect, and slight neglect. The position of negligence depends on the entire environment – which includes the place, the time, the individualities involved, and the position of complications. The difference between medical negligence and medical error is well-settled, and the principles are well-innovated being easily laid down in multitudinous cases by the Supreme Court; therefore, there is a need to appreciate this isolation by society so that health service providers do not get criminated for impracticable reasons. [1], [2]

The term Medical negligence refers to wrongful actions of the professionals in the field of Medicine related to his/her profession while dealing with patients, due to which damage or loss occurs physically and economically to the patient. The duties that a health service provider owes to his cases are a duty of care in deciding whether to take over the case, a duty of care in deciding what treatment to give, and a duty of care in administering that treatment. A breach of any of these duties gives a right of action for negligence to the case. A health service provider should know that the complainant (case), in order to succeed in the action of establishing negligence, must show that the damage would not have passed but for the defendant's (health service provider) negligence; or the defendant's negligence materially contributed to or materially increased the threat of injury; or if the claim is for careless nondisclosure, had he she been adequately informed he she would not have accepted the treatment. A victim can seek any of the following conduct against a careless medical professional Compensatory action Seeking financial compensation before the civil courts, high court, or the consumer disagreement redressal forum under the indigenous law, law of torts law of contract, and the Consumer Protection Act. Section 304-A of the Indian penal code states that whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years or with a fine or with both. [1], [2], [3], and [4]

Trusting the patient completely - is it right?

Improper conduct or failure to take certain elementary precautions in taking a patient's history could make the treating doctor negligent in the eyes of the law. A few other aspects, especially important precautions that can minimize medico-legal problems and significant judgments on this topic, are discussed here:

- Record any effort by the patient to conceal or even an inadvertent failure to mention correct medical history when one discovers the same.
- Beware of the patient giving the wrong history- Do not trust the patient thoroughly, especially when sensitive/ criminal/medico-legal issues could be involved.
- Record explicitly whenever a patient changes history during the course of treatment or whenever it is discovered to be untrue.

Doctors must elicit and record the correct and complete history of the patient. However, at times, the patient or the attendants do not give correct or complete history, inadvertently or intentionally. This may result in unfavorable results or complications that could have been completely avoided. Greater caution must therefore be exercised in taking history. Any suspicion that the patient or the attendants are not adequately disclosing the history must be explicitly recorded. During the course of the treatment, whenever the correct history is disclosed or discovered, it must be immediately recorded in the patient's medical records. The courts are also aware of this aspect. In cases where the doctors have been able to demonstrate that the adverse outcomes were due to the patient's failure to disclose complete and correct history, the courts have refused to hold the doctors negligent. [5], [6], [7]

Medico-legal safe practice- how much to know

Investigations are the gift of modern Medicine to humankind. Many unknown secrets of the human body have been discovered. Investigations play a vital role in helping doctors arrive at a proper decision and charting the appropriate treatment course. The role of a doctor in the process of investigation can be broadly classified into four stages from a legal perspective, namely:

1. The doctor arriving at a conclusion to advise a particular investigation.
2. The doctor advising the patient to perform the investigation.
3. The doctor perusing the investigation report.
4. The doctor acting further upon the investigation report.

Every doctor must be vigilant of all these four aspects and act in a timely fashion in accordance with the accepted medical practice. It is equally important that the four steps mentioned above are duly recorded in the patient's medical records, either in the prescription or internal medical record of a hospitalized patient.

- Advice investigations at the appropriate time-neither early nor late.
- Contemplate seriously on advising appropriate investigations if the patient is not getting relief, the patient's condition is deteriorating, or there are complications.

It is incumbent to advise appropriate investigations when the same is medically indicated, neither early nor late. The doctor must seriously contemplate other and further investigations when the results of the treatment are not on the expected line. **[8], [9] and [10]**

Patient concealing/ giving partial/ changing history
(Key learning points)

- The patients' wrongs, mistakes, and shortcomings which are disclosed to the doctor or discovered during the course of treatment, must be precisely noted in the history. Failure to do so has resulted in doctors getting punished for the wrongs of the patients, whereas in cases where these facts are clearly recorded, courts have rejected the allegations of negligence, relying only on the history of the patient recorded by the doctor. **[11]**
- Ask the patient a specific question about the hospitals/doctors consulted earlier.
- Insist that the prescription/ OPD card/other medical records of the earlier consultation/hospitalization are produced- Record specifically if the patient fails to produce the same.
- Record name/ period of consultation/history recorded/ diagnosis/ treatment and drugs prescribed/ other advice of the previous doctor/hospital.
- Patient with complications due to improper treatment of another doctor- take extra care/ caution in taking/ recording history.
- Record specifically the lifestyle/ addiction/ habits of patients, such as drinking/ smoking, which can have any bearing on treatment/interventions.
- If relevant, record the time gap between an earlier discharge and subsequent hospitalization.
- Ensure that admission forms have suitable spaces to denote whether the patient had earlier consulted or was admitted in the same hospital- Ask this question to the patient at the time of admission.
- Beware of the patient giving the wrong history- Do not trust the patient completely, especially when sensitive/ criminal/medico-legal issues could be involved.

- Record specifically whenever a patient changes history during the course of treatment or whenever it is discovered to be untrue.
- Record the patient's exact condition at the time of first consultation/ hospitalization/while accepting the patient from another hospital, especially when the patient is in an advanced stage of a disease or is critical.
- Note the presence of bedsores before admitting patients who are old/ immobile/ transferred after a long spell of hospitalization- Take suitable endorsement from the patient/ attendants if bedsores are found (Advisable).
- Elicit specific information about allergies/ congenital abnormalities from the patient-Record them in the patient's medical records.
- Record specifically all the physical deformities of the patient in detail, especially the ones that may have any bearing on the treatment.
- Follow the standard protocol of recording the patient's complaint/ pain/ discomfort and the number of days as stated by the patient in medical records.
- Emergencies- proceed without complete/ correct history. Record the fact that it was an emergency as well as the reason/s for recording an improper history.
- Anesthetics- take the complete history of the patient during anesthetic checkup and duly record the same.
- Non-gynecologists should also record the LMP of female patients in appropriate cases- consider this aspect in managing the patient.
- Record the history given by the patient in the medical records/prescription/admission form/ discharge certificate/ referral note/ transfer note.
- Take detailed history while admitting the patient/ during first consultation/ patients needing emergency care.
- Apply/ Take into account the patient's history for treatment and arriving at a diagnosis. [11], [12]

Safety measures in advising investigations/exploratory measures
(Key learning points)

- Advice investigations thoughtfully as and when required and not otherwise.
- Take clinical judgment/ patient's history/ patient's age/ complications/ such other factors into account while advising investigations.
- Take the recent advances made in medical science into account while advising investigations.
- Listen attentively to the patient/ attendants while advising investigation or perusing a report.
- Perform the basic pre-surgery investigations irrespective of the patient's history/ clinical condition.
- Perform the requisite preparative investigations closer to the day scheduled for elective surgery.
- Perform fresh pre-operative tests if the patient is readmitted for surgery.
- In case of any doubt on any investigation report, either because the report does not correlate with the other parameters or clinical findings/ is inconsistent with the earlier reports/ some other patient mistake is clearly visible- Repeat the investigation or perform the same at another laboratory, in suitable cases.
- Do not act/ diagnose/ rely on an investigation report that seems to be perverse/ unreasonable/ raises a reasonable doubt about its correctness.
- Peruse the investigation reports at the earliest and take appropriate action thereupon without any delay.
- Advise/ perform the requisite/ appropriate investigations at the indicated interval/s, especially for confirming a diagnosis- provisional/ final, prescribing a drug and deciding/ regulating the drug dosage.
- Perform or skip an indicated investigation only for a medically acceptable reason/ in the patient's interest- Record the reason/s.

- Patient's delay/ failure/ refusal/ neglect to perform investigations- Record this fact specifically in the patient's medical records and take the patient/attendant's approval, if possible.
- The patient refuses to perform an expensive investigation due to financial constraints- Record the said fact specifically. If the consequences could be severe, take a written consent letter from the patient in this regard (Advisable)
- Handling over the original investigation reports/ x-ray plates/ scans to the patient, especially for consulting another doctor or during transfers- Record this fact specifically in the patient's medical records, take a proper receipt from the patient/ attendants, and keep a photocopy of the same.
- Advice investigations at the proper time, neither early nor late. Contemplate seriously advising appropriate investigations if the patient is not getting relief, the patient's condition is deteriorating, or there are complications. [13], [14]

Discussion

It is a legal presumption that a doctor is capable of identifying an MLC case. Medico-legality is judged by the history furnished by the patient coupled with the examination findings. If a factual story is available, such a decision is not difficult. A medico-legal case is defined as a case of injury or ailment where the attending doctor, after taking the history and clinical examination of the patient, thinks that some investigation by law enforcement agencies is presented so as to fix responsibility regarding the case in accordance with the law of the land.

In some scripts, related cases are transferred to doctors by the court or by the police themselves. The medical person must ensure that the medical examination is duly carried out and that all the medical-related legal corroboration attained is suitably saved. Most importantly, when the case requires critical treatment, the doctor must give the primary treatment before fulfilling the formalities of a medico-legal case. Fortunately, doctors do not have to worry as maximum hospitals now have a medical-legal primer that provides detailed instructions to medical interpreters on the operation of medico-legal cases.

Whenever any person is brought or comes intending to be primarily treated specifically regarding medico-legal cases, he should be promptly attended to without waiting for notification and registration with the police when it may be intimated later. Supreme Court has repeatedly reiterated that treatment takes precedence over legal formalities, and the doctor is not to be held responsible if he/ she fail in his/her legal duties herein.

Conclusion

To conclude, the doctor should be well acquainted with the existing guidelines when dealing with medico-legal cases. In an MLC, he should carefully examine and treat the patient, record the date, time, place, brought by whom, and examination findings. He should also record the dying declaration if the person is on the verge of death. A doctor should remember that he should not issue death certificates for deaths under suspicious circumstances and recommend postmortem examination for the cause and nature of death, and police should be informed. Reorientation courses and Continuing Medical Education programs for medical practitioners are recommended for getting acquainted with the management of medico-legal cases.

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