LegalMD
Stronger Together

MEDICO-LEGAL NEWSLETTER

Monthly Newsletter by LegalMD

September, 2021

MEDICAL NEGLIGENCE (MALPRACTICE)

(a) Medical negligence or malpractice is defined as “lack of reasonable care and skill or willful negligence on the part of a doctor/medical officer in the treatment of a patient whereby the health or life of a patient is endangered”. The term “damage” refers to the patient’s mental or functional injury, while “damages” are assessed in terms of money by the court on the basis of loss of concurrent and future earnings, treatment costs and reduction in qualities of life.

(b) In order to prove negligence charges, the patient/consumer must establish to the satisfaction of the court the following points:

(i)Doctor’s duty to attend the patient with care

(ii)Negligence on the part of the Doctor

(iii)The patient suffered actual damage

(iv)The doctor’s conduct was the cause of the damage, whether directly or indirectly.

(c) The burden of proof is upon the patient / consumer. Failure to provide substantial evidence on any above-mentioned element may result in “No compensation”. Courts have repeatedly held that the burden of proving criminal negligence rests on the person claiming it. However, the onus shifts on to the doctor/practitioner to satisfy that there was no lack of care.

(d) Criminal law requires a mens rea/guilty mind. If there is a guilty mind, a practitioner will be liable in any case. However, a recent order of the Apex Court held that mens rea is not a necessary element in cases of medical negligence. (More on latest development/s below)

EXAMPLES OF MEDICAL NEGLIGENCE

Some examples of medical negligence are as follows:

- Erroneous administration of medicines
- Performing the wrong or inappropriate type of surgery
- Failing to provide appropriate medical advice
- Leaving any foreign object in the body of the patient after performing the surgery
- In an emergency situation the medical officer has to attend the patient at the place where the patient is, if the medical condition so warrants.

Inability to do so without a valid reason will constitute medical negligence.

It is to be noted that gross mistakes would invite the finding of negligence such as use of wrong drug or wrong gas during the course of anesthetic process, delegation of the responsibility to a junior with the knowledge that the junior is incapable of performing the duties properly, removal of the wrong limb, performing an operation on the wrong patient or injecting a drug which the patient is allergic to without looking at the outpatient card containing the warning, and leaving swabs or other items inside the patients [i]

LEGAL PROVISIONS UNDER THE INDIAN PENAL CODE

S304A, IPC: A person who commits a hasty or negligent act that results in culpable homicide is punishable by imprisonment for a term not exceeding two years, a fine, or both.

S337, IPC: A person is guilty of violating Section 337 of the Indian Penal Code, 1860, if he or she does a rash or negligent act endangering the lives or personal safety of others. The person will be sentenced to a period of imprisonment of up to six months or a fine of up to five hundred rupees, or both.

S338: A person is guilty of violating Section 338 of the Indian Penal Code, 1860, if he or she does a rash or negligent act endangering the lives or personal safety of others. The person will be sentenced to a period of imprisonment of up to two years or a fine of up to one thousand rupees, or both.

ADVISORY TO DOCTORS AND SAFEGUARDS IN CRIMINAL PROSECUTION BY SUPREME COURT

In the case of Martin F. D'Souza v. Mohd. Ishfaq (2009), the Apex Court listed out the following precautions to be taken by doctors/medical practitioners/medical officers, in the form of advisory:

"Precautions which doctors/hospitals/nursing homes should take:

- Current practices, infrastructure, paramedical and other staff, hygiene, and sterility should be observed strictly. Thus, in Sarwat Ali Khan v. Prof. R. Gogi (OP No. 181 of 1997 decided on July 18, 2007 [NC]) the facts were that out of 52 cataract operations performed between September 26, 1995, and September 28, 1995, in an eye hospital, 14 persons lost their vision in the operated eye. An enquiry revealed that in the operation theater, two autoclaves were not working properly. This equipment is absolutely necessary to carry out sterilization of instruments, cotton, pads, linen, etc., and the damage occurred because of its absence in working condition. The doctors were held liable

- No prescription should ordinarily be given without actual examination. The tendency to give prescription over the telephone, except in an acute emergency, should be avoided

- A doctor should not merely go by the version of the patient regarding his symptoms but should also make his own analysis including tests and investigations where necessary

- A doctor should not experiment unless necessary and even then he should ordinarily get a written consent from the patient

- An expert should be consulted in case of any doubt. Thus, in Indrani Bhattacharjee (OP No. 233 of 1996 decided on 9-8-2007 [NC]), the patient was diagnosed as having 'mild lateral wall ischemia.' The doctor prescribed medicine for gastroenteritis but he expired. It was held that the doctor was negligent as he should have advised consulting a cardiologist in writing

- Full record of the diagnosis, treatment, etc., should be maintained."

LATEST DEVELOPMENTS

MENS REA AS INTENT NOT NECESSARY IN MEDICAL NEGLIGENCE CASES

The Supreme Court in the case of Prabhat Kumar Singh vs The State of Bihar and Ors (Order available here) held that the absence of mens rea (bad intent) is not a necessary element in cases of medical negligence. It stated that proper established procedure is to be followed while trying medical negligence under criminal law.

The Bench relied upon the case of Jacob Mathew v. State of Punjab & Anr., where the SC had laid down the guidelines for examination of doctors in cases of medical negligence. As per the guidelines, before summoning the accused in a criminal medical negligence complaint, the complainant has to lead medical evidence and/or examine a professional doctor to support the claims put forth.

The complainant had filed a case under various Sections of the Indian Penal Code (IPC), S304 (punishment for culpable homicide not amounting to murder), S316 (causing death of quick unborn child by act amounting to culpable homicide) and S34 (acts done in furtherance of common intention). The High Court quashed the summons order on the grounds that there was no evidence of mens rea or any malicious intention. An appeal was preferred against this decision and was heard by Justice A.M Khanwilkar and Justice Sanjiv Khanna.

The SC observed that, 'For, when it is a case of medical negligence, it need not be because of mens rea as intent. Sans mens rea in the above sense also it would still constitute offence of medical negligence.' The Bench also observed that in the present case, the Trial Court failed to comply with the guidelines laid down and did not insist on a medical examination.

On basis of non-compliance, the Bench set aside both the orders (of High Court and of Trial Court) and referred the parties before the Trial Court for reconsideration of the issue afresh.

---

[1] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5109761/