

Medicolegal Implications in Pediatric Dentistry

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Abstract

The dentist has a legal obligation to practice dentistry at a specific standard of care. Negligence is the breach of this obligation that causes damage to the patient. Law affects every area of human activity including dentistry as well. The dentistry profession's ethical standards are steadily deteriorating, with altruistic values being supplanted by a profit-driven system. The lack of awareness of medicolegal concerns impedes the successful execution and delivery of efficient services. Patients are getting more educated, inquisitive, and aware of their legal rights in today's world. Legal jurisdictions and threats of legal action not only impede professional progress but also the practitioner's dignity. Hence, this review emphasizes on the ethical standards, the importance of informed consent, and awareness about negligence in dental practice.

Keywords: Medicolegal Issues, Informed Consent, Dental Negligence, Ethics, Consumer Protection Act (CPA)

Introduction

Doctors have been exposed and indicted around the country on charges of corruption, professional neglect, gratuities, and unlawful dual practice, both in the courtroom and in society. ^[1] Dentists have a huge responsibility and must adhere to specific rules of ethics in order to operate in the best interests of their patients. ^[2,3,4] It is a patient's prerogative to accept or reject the dentist's recommendations. Any scenario that results in a breach of duty is considered negligence, and a patient may be able to pursue legal action. To comprehend the legal status of the clinical error and to avoid future litigations in a court of law, understanding of the medicolegal elements of a specific clinical scenario in relation to the provision of law is important as a need of the hour. ^[2]

Understanding dentistry and medicine is just as essential as understanding the laws that regulate their practice. Law and medicine are intricately linked, and a thorough grasp of the law is required for safe and effective therapeutic

treatment. In India, public awareness of dental neglect is increasing. Patient care has deteriorated as a result of monetary gains, and patients are becoming more conscious of their rights.^[3]

Dental and medical ethics are deteriorating as a result of profit-driven corporate practices and commercial marketing. Health-care providers have been observed to have a very low incidence of maintaining records, follow-ups, and appropriate histories.^[4]

Ethics

Ethics is defined as the science of human character and behavior in situations where distinctions must be made between the right and the wrong, duty must be followed, and good interpersonal relations maintained.^[3,5,6,7] There are two types of Dilemmas: An “absolute” or “pure” ethical dilemma emerges only when two (or more) ethical norms apply to a circumstance yet are in conflict with one other. When there are conflicts between ideals, laws, and policies, an “approximate” dilemma emerges.^[5]

Dental ethics refers to the dentist's moral responsibilities and obligations to his patients, colleagues, and society. Dentistry is founded on five ethical principles: To do no harm, to do Good, Respect for persons, Veracity, Beneficence, Justice. The Dental Council of India is concerned with safeguarding dental practitioners' ethics in India.^[4,5,6,7]

Records

Clinical dental records are intended primarily for the recording and historical records of a patient's treatment. They are crucial in the provision of dental care, and contribute in an orderly way to diagnostic procedures, treatment planning and care provision. They are crucial when a patient complains or claims negligence, or anything goes wrong. The first and foremost is that 'at that moment' is registered. Dating entries, summarising the therapy offered, including what you are aware of by the

patient, and the findings of tests such as pulp testing, percussion and pain history should be summarised.^[6]

Hand-written clinical notes containing medical history (record cards/enclosures) Computerized records, radiographs and other image records (and tracings if relevant), Investigations (pathology reports, equipment monitors), models, photos, Correspondence among health workers, Additional information (e.g., laboratory instructions and receipts, estimates), Videos, Telephone conversation tape records can be utilized as records.^[6,7]

Up to date, medical history may be included in the written record; Date, diagnosis and treatment records, with complete information of any occurrences, events, or talks, including choices, every time the patient is visited. All the patient's payments, obtained consents, cautions and information provided Medicines and doses given.^[6,7]

Consent

The term consent refers to a willing agreement, cooperation, or approval. Obtaining consent for any course of health care activity is one of the most essential legal protections and moral duties of dentists to their patients.^[5]

Implied consent- Many patients may not expressly consent, yet their permission may be assumed by cooperative actions.^[5,6,8] Rowe stated it as “By sitting in the chair at the dentist office with their mouth open, a patient signals that they are there for dental care.”^[5]

Express consent - This form of consent is granted when a patient expresses their acceptance to a procedure or treatment in clear and precise words, either vocally or in writing.^[6,8]

Informed consent

This is a beneficial approach for informing the patient and building trust between the patient and the dentist. Every dental health care provider has a moral obligation to offer each and every patient with appropriate information about

all elements of treatment so that they may make an informed and adequate decision. [3,6,7,8,9]

The concept of informed consent is governed by elements such as disclosure (subject receives a thorough disclosure of information about an intervention), Comprehension (subject should fully understand the intervention), Voluntarism (the person acts "voluntarily" in providing consent). Capable (subject must be completely competent to provide permission), Consent (subject should provide consent either oral or written). [6,7,8,9]

Paediatric Informed Consent - According to the American Academy of Pediatric Dentistry (AAPD), informed consent is crucial in the delivery of health care. The informed consent procedure permits the patient or, in the case of children, the custodial parent/legal guardian, to engage in and retain control over the health treatment received, reducing the practitioner's exposure from misinterpretation claims. In the event of children under the age of 12 and individuals of unsound mind, IPC 89 requires that consent be acquired from the guardian or other person accompanying the pediatric patient before executing any medical treatments. [8]

An orphan or any child in the ward could be accompanied by a caregiver, but the caregiver must obtain legal guardianship before consenting to medical operations. To agree for medical treatment for the patient, the oral health care practitioner needs to get a copy of the permission form. [8]

Negligence

Negligence is the failure to employ the degree of care that, under certain circumstances, is regarded reasonable leads to unintended damage. [2,6] Medical negligence is seriously considered and the law has imposed on the doctor or the health care provider a duty of care. Patient complaints are largely because of inappropriate dental care and unrealistic expectations or both. [6]

The following factors must be present for an act to be declared negligent- [2,5,6,7]

1. A particular quality of care was owed to the doctor.
2. The doctor failed to uphold that standard.
3. A damage caused by a lack of care.
4. There must be a link (proximity) between the negligent conduct and the damage that results.

Non-negligent scenarios include the patient's dissatisfaction with the course of therapy, failure to acquire a consent form in an emergency, patient not receiving the expected relief, The patient considers the charges to be excessive. When a patient does not follow the doctor's recommendations and does not obtain better results, the dentist cannot be held liable.

Test of Negligence

The Supreme Court in described the test of standard as "The medical practitioner should bring to his work a fair level of competence and understanding, as well as a reasonable level of care. "The law demands neither the greatest nor the lowest level of care and competency, as determined by the facts of each individual case." [7]

1. Bolam Test- The impact of the Bolam test is that the accused doctor does not make a finding of negligence if he behaved in line with a reputable medical opinion body. This criterion was frequently approved and established in law at appeal level. But this doesn't make a difference between "what is done" and "what should be done." [5,8]
2. Botham Test- The validity of acceptance of the defendant's treatment or course of action, and more significantly, the legitimacy of rejecting competing options, are assessed by this assessment on the basis of 'risk analysis.' The Court may examine a number of factors in conducting such an analysis, including the magnitude of the risks, the relative risks involved in alternative interventions and treatments, the severity

of the consequences, the ease of risk avoidance and the financial and health resource implications of such avoidance.^[5]

Doctors Liable for Negligence under^[2,5,7]

1. **Tortuous liability (Civil Liability)**- two types
 - a. **Primary Tortuous Liability** - Primary liability occurs when a doctor or dentist is directly responsible for an act of negligence in his clinic or hospital. The majority of dental malpractice falls under this category.
 - b. **Vicarious liability**- Dentists who work for a hospital or institution are frequently not the primary perpetrators of negligence. They may be deemed to have vicarious liability as a result of their association with the hospital. The hospital is liable for an employee's negligence.
2. **Contractual liability** - Continue to treat the patient until he or she is cured or no longer requires treatment. If there is no formal contract, their obligation will almost always fall under the category of tortuous liability.
3. **Criminal liability** - Recent trends reveal that hospitals are also responsible for civil liability. Criminal responsibility is punishable by penalty in the form of a sentence or a penalty, or both. Criminal negligence, rather than simply an offended individual, is seen as a crime against society.

Laws as per IPC^[2,7]

- Section 304A (IPC) - Negligent homicide. A hasty or careless deed that results in death, such as death on the dental chair.
- Sec 336 (IPC) – The action that endangers a person's life (even when there is no harm), for example, extraction of a tooth from a valvular heart disease patient without endocarditis antibiotic prophylaxis (even if he does not develop endocarditis).

- Sec 337 (IPC) - Rash or faulty action, which causes minor wounds, e.g., discomfort or swelling owing to careless treatment.
 - Sec 338 (IPC) - A hasty or careless event that causes severe damage, such as fracture of the jaw due to excessive force during extraction
4. **Statutory liability**- If the statutes are infringed, a dentist will be held responsible. They are subsequently held responsible to a legal body. The responsibility depends on the type of violation and the provisions in the statute to deal with it.

Legal procedures

The Consumer Protection Act (CPA) of 1986 was intended to further safeguard consumers' interests and to offer easy and rapid access to resolving consumer complaints. In 1995, the Supreme Court of India delivered a judgement on the application of the CPA, 1986 to the medical/dental profession, hospitals, dispensaries, and nursing homes, granting patients the right to sue in consumer courts in the case of alleged negligence. The Consumer Commissions have the authority to award compensation to unsatisfied customers for the losses they have suffered.^[2,4,7,10] Dental negligence is covered under Section 2(0) of the CPA, as no provision has been made for awarding compensation, dental care procedures or the admission of patient complaints by the Indian Dentist Act (IDA).^[2,4,5,7,10]

Consumer disputes redressal agencies are known as Consumer Forums or Consumer Courts have been created under the act at national, state and district level. When a Consumer Forum, receives a complaint against a doctor, it must send the matter to a qualified doctor or a committee of physicians to have the accusations confirmed. If negligence has occurred, then a notice sent to the doctor or hospital. Table 1 mentions the legal proceedings.^[12]

Table 1: Legal Proceedings ^[2,7,13]

- A complaint must be made within two years of the date on which the action is taken, (according to section 24A of CPA). ^[2,7]
- According to section 13 of the CPA, a copy of the complaint must be provided to the dentist, to give reply within 30-45days and dentist may contradict the complaint in reply. If no answer is made after 45 days, the court directs the dentist to disrespect proceedings. ^[2,7]
- Any individual who is aggrieved by a District Forum order has 30 days from the date of the order to file an appeal with the State Commission or the National Commission. ^[2,7]
- Frivolous litigation- Section 26 was enacted to discourage the submission of fraudulent, frivolous, or vexatious complaints. If the complainant contacted the Forum without enough explanation and in a frivolous manner, the complaint is dismissed, and the complainant is ordered to pay the opposing party such expenses, not exceeding ten thousand rupees, as indicated in the decision. ^[12]

Protection against civil liability- This is best accomplished by meticulous record-keeping. In a case from Gujarat, the necessity of thorough treatment records is underlined. The State Consumer Commission stated that the doctor's defence against carelessness lacked documentary proof State and not provided adequate or standard treatment and attempting to cover up negligence. ^[10] A litigation analysis reported that when any evidence was presented by the dentist in his favor throughout the litigation, the outcome was favorable to the dentist (76.67%). ^[11] The Supreme Court has broadened the concept of criminal liability for medical negligence by requiring "gross" medical malpractice. The court

acknowledged doctors' guilt through the civil liability procedure, in which the victim or victim's family is granted higher compensation. ^[14] For doctors and medical professionals, professional indemnity insurance coverage was made available. These policies are intended to shield the insured against the financial repercussions of legal responsibility. ^[13]

The common reasons resulting in litigation and the minimum as well as maximum compensation awarded are listed in table 2^[11,13] and necessary steps to prevent litigation are enumerated in **table 3** ^[13] and circumstances in which negligence can be defended are mentioned in **table 4** ^[12]

Table 2: Common reasons for litigation and compensation awarded (in INR) ^[11,13]

Specialty	Causes of Litigation	Minimum	Maximum
Prosthodontics	- Improperly Fitted Dentures	8907	40622
	- Functional Disruption, Including TMJ Discomfort		
	- Faulty Bridge	8953	223820
Endodontics	- Broken Instruments	35838	114944
	- Pain		
	- RCT	8953	24988
	- Damage To Adjoining Tooth Structures	24988	300000

	– Foreign Body Remains After Treatment		
Restorative Dentistry	– Multiple Fillings Failure – Composite Fillings (Mostly Posterior).	23704	248892
Oral Surgery	– Lingual & Inferior Alveolar Nerve Paresthesia – Unexpected Sequence (Antrum Involvement) – False Teeth Removal – Roots Retained – Damage To Neighboring Tissues. – Cyst removal – Mandible Fracture – Implants	6715 24083 6715 632316 12356339189	708200 100893 125680 632316123563 708200
Periodontics	– Failure To Diagnose – Failed Surgery.	38585	58946
Orthodontics	– Unexpected Relapse – Damage To Teeth & Surrounding Tissues – Inadequate Treatment Plans	21894	76836
Others	– Infection – Inordinate Delay – Negligence – Unnecessary removal – Warranty claim – Wrong outcome – Wrong Procedure	38049 8907 6715 38585 15789 17973 112330	553918 8907 708200 39349 15789 552824 632316

Table 3: Steps to prevent litigation ^[13]

Do	Don't
<ul style="list-style-type: none"> • Always include the date and time of the consultation, patient's age, weight (in child cases) on prescription • Always note the patient's history of sickness and significant physical findings on the prescription in complex cases. • Make a note of it or request a formal rejection, preferably in the local language with competent witnesses, if the patients/ attendants are wrong on any count (history not reliable, rejecting investigations, refusing admission). • Mention the review and follow-up schedule specifically. • Mention who the patient should call if the doctor is unavailable or if there is an emergency. 	<ul style="list-style-type: none"> • Don't hesitate to discuss the case with your colleague • Don't hesitate to discuss the case with patients/ attendants • Don't examine the patient if you are unwell, fatigued, or under the influence of alcohol • Despite fierce professional competition, never speak ill of your co-workers. • Don't use experimental methods in therapy.

Table 4: Defense against negligence ^[12]

<ul style="list-style-type: none"> • Complications Known
<ul style="list-style-type: none"> • Opinion divergence
<ul style="list-style-type: none"> • Unforeseen or unintended results
<ul style="list-style-type: none"> • Negligence on the part of the contributor
<ul style="list-style-type: none"> • Medical assistance in an emergency

Conclusion

The dentistry profession must be transparent, engage patients in therapeutic decision-making, and enhance communication in order to preserve its traditional credibility in this CPA-driven era. The most crucial criteria in defending the litigation are the records. In legal terms, a dentist's written records trump a patient's recollections.

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