

Medicolegal Cases in Pediatric Dentistry¹Dr. Sapna Konde, AECS Maaruti College of Dental Sciences and Research Centre.²Dr. Sahana N Prasad, AECS Maaruti College of Dental Sciences and Research Centre.³Dr. Sathya R, AECS Maaruti College of Dental Sciences and Research Centre.⁴Dr. Manisha Agarwal, AECS Maaruti College of Dental Sciences and Research Centre.⁵Dr. Preetha Peethambar, AECS Maaruti College of Dental Sciences and Research Centre.**Corresponding Author:** Dr. Sathya R, AECS Maaruti College of Dental Sciences and Research Centre.**Citation of this Article:** Dr. Sapna Konde, Dr. Sahana N Prasad, Dr. Sathya R, Dr. Manisha Agarwal, Dr. Preetha Peethambar, “Medicolegal Cases in Pediatric Dentistry”, IJDSIR- October - 2022, Vol. – 5, Issue - 5, P. No. 153 – 162.**Copyright:** © 2022, Dr. Sathya R, et al. This is an open access journal and article distributed under the terms of the creative commons attribution non-commercial License. Which allows others to remix, tweak, and build upon the work non-commercially, as long as appropriate credit is given and the new creations are licensed under the identical terms.**Type of Publication:** Original Research Article**Conflicts of Interest:** Nil**Abstract**

Dentistry has advanced tremendously over the past few decades right from the infection control measures to formulation of treatment protocol. This profession encompasses both patient management as well as appropriate and prompt treatment delivery. Hence it is imperative for the dentist to not only be skilled, knowledgeable and technically competent but also to conduct themselves in accordance with the basic ethical principles. This article outlines the basic principles of health care ethics, importance of record maintenance, obtaining informed consent, consequences of negligence, Indian judiciary for dental professionals and certain ethical proceedings.

Keywords: Skill; Knowledge; ethical principles; records; informed consent; negligence; Indian judiciary**Introduction**

Dentistry has advanced in leaps and bounds in terms of technique, equipment, policies, infection control

requirement. Along with this advancement arises the question of changing views on legal issues of patient management and proper childcare. This requires us to give heed not only to the upsurge in scientific advancement in treatment delivery, but also gives an opportunity to develop and promote standards of care that act as guidelines, which safeguards both the patient and the dentist. Dentists have huge responsibility to follow codes of conduct and to act in the best interest of the patient. This brings us to a grey area of ambiguity where delivery of proper care cannot just be supported by scientific evaluates, such as dentist patient relation, patterns of re embursement, political and cultural changes, ethics which complicates the definition of proper patient care.

The undisputed concern of every patient is that they should be treated with utmost care. Any circumstances resulting in lack of duties can account to negligence and may give a footing for patients to proceed in the court of

law. Hence to understand the nuances of legal status of any practical errors and to prevent untoward scenarios promoting litigates in court of law, a clean and complete awareness regarding the medico legal aspects and its bearing on the law is the need of the hour.

It is however difficult to establish a baseline for 'Reasonable Care', below which it is considered to be substandard due to the existing dynamicity. We must address the task of deficiencies and decide what falls under the preview of standard care or reasonable care. For this there exists certain legal /social science markers in the practice of dentistry

1. International Principle of Ethics
2. Maintenance of updated clinical records, primarily designed to document treatment carried out on a patient and acts as a historical record
3. Informed Consent
4. Clinical Negligence

Principles of health care ethics

Ethics is the study of morality - careful and systemic reflection on and analysis of moral decisions and behavior, past, present or future. Ethical principles are the inspirational goals of the profession which provide guidance and offer justification for the code of professional conduct and the advisory opinions^{1,2}.

Four principles of health care ethics have been identified and summarized by Hope et al^{1,2} which are useful tools for dentists facing ethical or moral dilemmas in practice.

Respect for patient autonomy

Autonomy is the ability to think, decide and act on the basis of such thought and decision independently. Respect to patient's autonomy means providing necessary information, allowing patient to make informed decisions, respect those decisions and follow them. The reverse of this self-determination is

'Paternalism', where a dentist makes a decision without considering patient's wishes^{1,2}.

Beneficence: Promotion of what is best for the patient

This is a fundamental aspect of dental care for patients and the duty of dentist is to steer the patient into what is best for them. It is an objective assessment of particular patient's needs and this would mostly chime with what patient wants under the principle of autonomy^{1,2}

Non-maleficence: Avoiding harm

It is a well-recognized maxim in dentistry that professionals should protect patients from harm. Hence benefits of treatment provided should outweigh the harmful effects if any and this is a significant consideration when cosmetic dentistry is involved^{1,2}.

Justice

The principle of justice embodies the concept that dental profession strives to improve access to care for all throughout society. It should be attempted to distribute finite resources of time and money in a fair and equitable manner irrespective of race, creed, color, sex or national origin^{1,2}.

Maintenance of updated clinical records

Records are 'contemporaneous', meaning it is 'Recorded at the time'. Clinical record keeping acts as an indispensable tool in delivery of dental care since they contribute to the process of diagnosis, treatment planning, document any history of medical conditions, allergies etc. It allows patient's care to be assessed by the treating dentist or by patients themselves in an orderly fashion^{3,4}.

Contents and standards in Record keeping:

- Date, diagnosis and treatment notes every visit.
- Up to date medical history

- Monitoring information such as BPE scores, periodontal probing depths and other indices, tracking oral pathology and other conditions
- A detailed information regarding allergies
- Findings and diagnosis on radiographs
- Drugs and dosages given
- Consents obtained, warnings and information given
- All payments done by patient
- All correspondence to and from the patient or any third party.
- Exit notes - If the patient desires to discontinue treatment from a particular dentist, reasons must be noted down and recorded especially if they are in the midst of treatment ^{5,2}

Good records hence serve as a written document to the entire process of patient examination, investigations, treatment plan and prognosis. It shows a methodological approach to treat the patient and are excellent leverage in providing crucial insight to patient's treatment procedures, their delivery and quality of care in itself ^{3,4}.

Informed consent

Consent is willingness for conduct to occur which can be manifested by action or inaction. It refers to a patient's authorization to be treated by physician or other health care provider⁶. AAPD recognizes informed consent as essential in the delivery of health care ^{7,6}. Pediatric dentist should view informed consent not merely as a legal obligation but as a means of helping patient understand the procedure, health hazards associated with materials as well as benefits which outweigh them ^{8,6}. Consent form should never be used as a shortcut to patient discussion and communication ^{8,6}.

Nature of consent

The consent to treatment may be implied or expressed.

Implied consent: Though many patients do not explicitly give express consent, their agreement may be

implied by compliant actions. Patients attending dental checkup in pain imply their consent to examination by sitting on the dental chair and opening their mouth ^{9,4}

Express Consent: Express consent is given when patients confirm their agreement to a procedure or treatment in clear and explicit terms, whether orally or in writing ^{9,4}.

Components of valid consent

The essential components to valid consent are ^{10,6}:

Competence: The patient has sufficient ability to understand the nature of treatment and the consequences of receiving /declining that treatment. The legal term is Capacity ^{10,6}

Voluntariness: The patient has completely agreed to the treatment without any coercion or undue influence to accept or decline the treatment ^{10,6}.

Information and Knowledge: Sufficient information is comprehended by the patient regarding nature and consequences of proposed and alternative treatments ^{10,6}

Age specifications

- According to Indian Penal Code (IPC) 87 and 88, persons above 18 years of age can give valid consent either implied or expressed ^{11,6}.
- For Children below 12 years of age and persons with unsound mind, IPC 89 states that consent can be obtained from the guardian or other person having lawful charge for that person ^{11,6}.

Pediatric informed consent for dental treatment

- Informed consent for medical /dental treatment of a child is to be provided by parents which is called "Proxy"⁶
- Proxy consent is effective to the fullest if child too agrees and cooperates for medical/dental treatment procedures ⁶
- It should cover each and every aspect of treatment procedure without confining only to the major ones ⁶

- Medical terminologies should be eluded during conversation for better perception of the procedures and risks involved ⁶
- Despite the sufficiency of verbal consent for legal needs, written consent is always safe and important for more adequate documentation ⁶.

Aapd recommendations

The following points must be kept in mind when the practitioner utilizes an Informed consent ^{7,6}

- Name and Date of Birth of pediatric patient
- Name and relationship to the pediatric patient
- Description of the procedure in simple terms
- Disclosure of known adverse risks
- Professionally recognized or evidence-based alternatives to treatment
- Place for custodian/ parent /legal guardian to indicate that all queries have been resolved
- Places for signature of the custodian/ parent or legal guardian, dentist and an office staff member as a witness ^{7,6}

Consent for behavioral management

The main goal of a pediatric dentist is “to treat the child in the most efficient manner with the least amount of trauma”^{8,6}. Pediatric dentist every now and then encounters uncooperative children who refuse /are incapable of accepting the treatment. They pose a great challenge, yet dental treatment must be provided by means of instilling behavior management techniques which has to be explained to the parents and specific consent must be obtained ^{8,6}.

Traditional child behavior management techniques in pediatric dentistry which requires consent are ^{8,6}:

- Tell-Show-Do
- Nitrous Oxide sedation
- Passive restraints

- Voice control
- Hand over mouth
- Oral Premedication
- Active /Physical restraint
- General anaesthesia

Negligence

The word ‘Negligence’ is derived from the Latin word Neglego or mala praxis means absence of reasonable degree of care and skill¹³. It is the breach of legal duty or obligation which is cast on the profession by his/her morals and ethics. It is in specific, the improper or unskilled treatment rendered to a patient by a medical or dental practitioner which includes a nurse, physician, surgeon, pharmacist, or others. Medical negligence leads to ‘Medical malpractice’ where victims suffer some sort of injury ¹³.

Acts considered as negligence:^{17,18}

1. When a person fails to accomplish duty and care to which he/she is bound by his /her profession
2. An act of negligence must show the element of “guilty mind”
3. The act causes injury/damage
4. The act and subsequent damage should be closely related ^{17,18}.

Types of negligence ¹³

1. Doctors Negligence
 - Civil Negligence
 - Criminal Negligence
2. Patient Negligence
3. Contributory Negligence
4. Composite Negligence
5. Corporate Negligence ¹³

Doctors’ negligence

Civil Negligence

Patient demands monetary compensation for the damage that has occurred due to the doctor’s negligence. A

doctor too can bring a civil suit against the patient to recover his fee. The case for negligence either goes to civil court or to consumer forum wherein it is the duty of patient to prove negligence.

Punishment

Doctor must pay the compensation decided by the court, without criminal liability. The patient may complain to the Dental Council of India or Medical Council of India for which action might be taken against the doctor as in the removal of name permanently or temporarily from the dental register. It is the duty of patient to prove negligence¹³

Criminal Negligence

When patient complains to the police regarding the misconduct or negligence of the doctor and police register a case against the doctor.

Punishment

The doctor is prosecuted under the various sections of the IPC, and if found guilty the doctor is liable to pay damage as well as can be sentenced as a prisoner in jail as per law¹³.

Patient negligence

Patient negligence is outright negligence only by the patient and not by the doctor. In circumstances where patient gives improper history, starts an alternative form of treatment without the doctor's knowledge, fails to adhere to instructions, discontinues treatment. It is the duty of the doctor to prove the negligence.¹³

Contributory negligence

A situation where both the doctor and patient are found negligent. If it is shown that the doctor had a "last clear chance" to avert the damage caused to the patient and if he didn't avail this chance, he loses his defense of contributory negligence¹³

Composite negligence

When a patient has injury as a result of the combined negligence of two or more doctors. Damages are not distributed, only the total sum awarded.

It is the sufferer who, if he wishes can even claim all the damage from a single person. If a doctor feels that he has been asked to pay more than justified, he can claim contributory from the other doctor¹³

Corporate negligence

It is the negligence of corporation (hospital). The individual doctor may or may not be necessarily liable in this case if the hospital had used defective /poorly maintained equipment or drugs, not followed the sterilization protocol.¹³

Indian judiciary for the dental professionals

Provisions¹³

Section 304-A of the Indian Penal Code, 1860

If a person commits a rash or negligent act which amounts to culpable homicide; then the person will be punished with imprisonment for a term which may extend to two years or fine or both.

Section 337 of the Indian Penal Code, 1860

If a person commits a rash or negligent act due to which human life or personal safety of others gets threatened, the person will be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or both.

Section 338 of the Indian Penal Code, 1860

If a person commits a rash or negligent act due to which human life or personal safety of others gets threatened, the person will be punished with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or both.⁵

Defenses¹³

Section 80 of the Indian Penal Code, 1860

Anything which happens as a result of an accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution is not an offense.

Section 81 of the Indian Penal Code, 1860

An “act likely to cause harm, but done without criminal intent, and to prevent other harm” to a person or his property is not an offense.

Section 88 of the Indian Penal Code, 1860

No one can be made an accused of any offense if he performs an act in good faith for the good of other people and does not intend to cause harm even if there is a risk involved and the patient has given the consent explicitly or implicitly.

Ethical proceedings against dentists

A retrospective and descriptive study (Karin et.al.,2014) using a quantitative approach examined 529 cases and categorized as follows ¹⁹:

- The infringement was illicit advertising (39.7%),
- Technical error (18.7%),
- Irregular registration (16.8%),
- Patient/professional relationship (11.3%)
- Tax lien foreclosure (6.6%),
- Professional/professional relationship (4.0%),
- Irregular/illegal cover up practice (0.9%),
- Consumer relations (0.8%),
- Failure to provide care (0.6%),
- False certification (0.4%), &
- Disrespect for authority and colleagues (0.2%)¹⁹.
- Melani et al., (2010), analyzed 41 initial petitions of civil suits filed against dentists, 97.50% involved indemnity proceedings, or action for damages.¹⁹
- Katrova L. (2010) catalogued the most frequent irregularities related to dentistry as, lack of

communication between the oral health professional and the patient, a tendency to raise a patient's hopes unfoundedly, improper use and handling of materials, unduly indicated procedures and clinically unfeasible treatments ¹⁹.

Cases in favour of professional

Misbehaviour claim

A 12-year-old female patient underwent a restorative procedure, while her parents waited in the waiting area. A misbehavior claim was imposed on the treating dentist the following day. The CCTV footage from inside the dental operatory showed that the dentist had used voice control and HOME as behavior management technique which was misconstrued by the child as otherwise

Verdict

In the event of real misbehavior, the dentist is liable to be prosecuted under Protection of Child against Sexual Offense (POSCO act 2012) & DCI code of conduct 2011 and it is a non bailable offense ²³

Cases against professionals

Government Scheme misuse ²⁴: A dentist had redundantly treated over 280 children of different villages with fixed orthodontic appliances with the intention of monetizing from government scheme
Grievance: Consent of the parent was not obtained.

Verdict: Chhattisgarh State Dental Council under Section 41(1) of the Dentists Act, 1948 suspended the registration of petitioner(dentist) from 18.03.2021 to 18.03.2022.

An instant petition was filed by the dentist challenging the suspension order on grounds of stating that such order is without jurisdiction ²⁴. The Chhattisgarh high court dismissed the petition as being devoid of merit ²⁴

Negligence in administering anesthesia ²⁰

A 3-year-old male patient undergoing pulpectomy, fell unconscious during the procedure and remained so for 3

hours. The child was taken to tertiary center for revival but failed. It was alleged that the patient suffered cardiac arrest within seconds of administering anesthesia

Grievance: A case of medical negligence was registered against the doctor and a petition was filed under article 226 of the constitution of India.

Verdict: The petitioner's name was removed from the State Dental Council for a period of 2 years²⁰

Dental malpractice lawsuit (Tomoko Hamasaki and Akihito Hagihara.,2021)

A case of dental malpractice was raised against a dentist who was approached by a patient for RCT in relation to fractured posterior tooth. During administration of LA, needle breakage was noticed which the dentist failed to inform the patient and left the needle fragment in the soft tissue.

Grievance: Dental malpractice

Verdict: The court identified the dentist liability and found the acknowledgement of dentist's fault and breach of dentist's duty to explain

Consent of the patient not obtained²¹

Orthodontic treatment was initiated for a 15-year-old female patient whose chief complaint was mal-aligned anterior teeth. The patient later approached another practitioner who de bonded the orthodontic brackets and instead placed crowns on all the maxillary anterior.

Grievance: The patient was traumatized by the unexplained and unwarranted prosthetic treatment provided, that led to severe tooth sensitivity requiring root canal treatment.

Verdict: The court found the dentist to be at fault and ordered a compensatory fee of Rs 1 lakh to be paid to the patient²¹

Procedural negligence

A father of a minor patient filed a complaint against a dentist by alleging that in spite of pulpectomy being

performed in multiple sittings, child continued to suffer from pain in the respective tooth. Radiographs at a later date revealed fragment of a broken file. The patient was advised to undergo further surgery for removal of the file.

Grievance: Failure to inform the patient about the broken instrument. Efforts should have been made to retrieve the file.

Verdict: The dentist was ordered to deposit an amount of Rs 25000 /-

False claim submission.

A corporate dental chain spread over 17 states in the USA submitted false claims to state Medicaid programs for seemingly unnecessary pulpotomies, tooth extractions, and stainless-steel crowns, in addition to seeking payment for pulpotomies that were never performed²².

Grievance: It was alleged that the chain of clinics knowingly submitted false claims to the Medicaid Program from January 2009 to December 2011 under false pretences for treatment that were not or not fully provided.²²

Verdict: The Dental Chain paid the United States and participating states \$23.9 million plus interest to resolve allegations that they knowingly submitted false claims for payment to state Medicaid programs²².

In a similar case, a dentist from France was jailed for deliberately harming healthy patients to undergo unnecessary procedures in order to reap payments from social security

implication of basic protocols should be incorporated within routine practice. Dentists should act in the interests of patient, abiding by the ethical principles, guidelines and providing highest standard of clinical care.

Conclusion

In health care profession, errors could result in serious consequences where the doctor becomes legally answerable. Taking necessary precautions is essential than tackling issues at a later date.

The knowledge and implication of basic protocols should be incorporated within routine practice. Dentists should act in the interests of patient, abiding by the ethical principles, guidelines and providing highest standard of clinical care.

In addition to structuring a proper treatment plan, utmost care should be taken with regards to proper record maintenance and documentation to protect against medico legal litigations.

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