Duty of Doctors - Medicolegal Aspect

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Duty of Doctors - Medicolegal Aspect

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Introduction

- Every registered medical practitioner has to perform some medicolegal duty during discharge of his/her duty.
- In the emergency room, they have to make injury report in all unnatural cases.
- But if the patient is moribund, arrangement of treatment is to be made first. In case the patient is not admitted, only PC (police case) is done. But if the police case is admitted, IPC (indoor police case) is to be done.
- In both the cases government prescribed form is there. If the form is not available, it may be done in plain paper under seal and signature of the medical officer.
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• Here brief history of the case is necessary. The injuries are to be mentioned one by one with their position, approximate measurement and type of the injuries ie, abrasion, bruise, laceration injuries etc

• Lastly, the provisional diagnosis of the case and the prognosis of the case are to be mentioned. It is a very important duty for EMO (emergency medical officer).

• If he fails to discharge this duty he may be charged under Sec.201 IPC and the punishment may be 3 months of imprisonment or fine upto Rs.500.00 or both
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- In addition, during examination of the case, a male/female attendant should be present for a male patient and a female for a female patient. Otherwise, the doctor may be charged with indecent assault under Sec. 354 IPC and the punishment may be imprisonment up to 2 years with and/or fine.

- Next in the ward, the doctor is to examine the case very carefully and treat the patient with a reasonable degree of skill, care and knowledge to avoid charge of negligence.

- BHT (bed head ticket) is to be maintained properly with care and skill. The doctor should give proper and suitable prescription. He should mention the exact quantities and precise timing for taking medicines.
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- Here, may have to make “dying Declaration”. It is a statement of a person, written or oral, who is dying as a result of some unlawful act.
- The doctor is to assess that the patient is in good mental condition before the declaration is recorded. The declaration is made in question and answer form.
- The declaration should be noted down in verbatim or the patient in presence of two responsible witnesses. It should be signed by the doctor, the patient and the witnesses.
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- Another important medicolegal duty of the doctors in the ward, is to help in the preparation of “Dying Deposition”.
- It is the statement of a dying man, before a Magistrate and the accused or his Counsel, on Oath. In a ward, it is a bed side court.
- Here, the doctor has to certify the mental and physical fitness of the patient to make such a statement.
Introduction

- Now, in the operation theatre, the doctor in charge of the operation should be very careful before going to operation proper.
- He should note that all the formalities have been completed. The written consent of the patient and the guardian should be taken before going for operation.
- Before closing the operation, the swab count and the instrument count should be made so that none of them remains in the operation field.
Introduction

- If any one of them remains inside the operation area, the doctor may be charged with criminal negligence under “Res Ipsa Loquitur” which means “The thing speaks of itself”.
- The doctor may be charged with criminal negligence under Sec.304A IPC causing the death of any person by doing rash and negligent act not amounting to culpable homicide and the punishment is imprisonment upto 2 years or with fine or with both.
- In addition, administrative proceedings will start against the doctor and he may be dismissed from the service and his name may be erased from the State Medical Council.
Duty to take consent in medical practice: -

- Consent means voluntary agreement, compliance or permission when a patient is coming to a doctor for treatment, the consent is implied. There is no need of taking written consent.
- But in some special cases written consent is required. In criminal cases, the victim and the accused cannot be examined without his/her written consent. The court also cannot compel a person to get medically examined against his/her will.
- A) In case of rape, the victim should not be examined without her written consent.
- B) In medicolegal cases of pregnancy, delivery and abortion, the woman should not be examined without her written consent.
Consent

- But the convicted person can be examined without his/her consent by applying reasonable force. Because the convicted person has no civil right.
- Different consenting age: -
  - For medicolegal examination 12 years and above.
  - For sexual intercourse 16 years and above.
  - For operation to suffer any bodily harm 18 years and above.
  - A child under 12 years of age and an insane person can not give valid consent.
Requirement of consent :-

- In various fields of medical practice written consent is required. Only some examples are given here:
  - For contraceptive sterilization, written consent of both the husband and wife should be obtained.
  - For artificial insemination, written consent of both the donor and the recipient side should be obtained.
  - For medical termination of pregnancy, the written consent should be obtained from the woman as well as from the guardian.
• For organ transplantation, the organ of the dead person should not be removed without the consent of the person having lawful possession of the body.

• Pathological autopsy should not be conducted without the consent of the guardian or legal heirs of the deceased. But for medicolegal autopsy no consent is required. Only inquest is sufficient to hold this autopsy.

• In case of emergency, no consent is required to save the life of the patient in good faith.

• If the doctor fails to follow these rules of consent, he may be charged with professional negligence (malpractice) both civil and criminal negligence. The punishment may be issuing of warning notice for infamous conduct, erasure of names civil negligence and criminal negligence where the patient dies after operation and the consent has not been taken.
Suspected Poisoning

- In case of **homicidal poisoning**, the doctor is duty bound to inform the police officer or the Magistrate. But the doctor should confirm his suspicion before expressing an opinion. For this he must:
  - (a) **Collect** urine, vomit and faeces and submit for analysis.
  - (b) Carefully observe and record the **symptoms** in relation to food.
  - (c) Consult in strict confidence with **senior practitioner**.
  - (d) Either remove the patient to hospital or engage nurses of his confidence.
  - (e) Any **suspected** articles of good, excreta and stomach wash samples should be preserved.
Suspected Poisoning

- Non-compliance is punishable under Sec.201 IPC if it is proved that the doctor did it with the intention of protecting the accused. If the doctor is sure that the patient is suffering from suicidal poisoning, he is not bound to inform the police.
- If the doctor is summoned by the investigating police officer, he is bound to give all information regarding the case that has come to his notice.
- If he conceals the information, he is liable to be prosecuted under Sec.202 IPC if he gives false information, he is liable to be charged with the offence of giving false information under Sec.193 IPC.
Suspected Poisoning

- A government medical officer is required to report to police all the cases of suspected poisoning, whether accidental, suicidal or homicidal in nature.

- If a case of suspected poisoning dies, death certificate should not be issued but death declaration should be made and it should be communicated to the nearest police station.
Duty of a doctor in a case of criminal abortion :-

• A criminal abortion is the induced destruction and expulsion of the foetus from the womb of the mother unlawfully when there is no therapeutic indication for the operation.

• The doctor’s duty in this case is to guard all the informations obtained by him as a professional secrecy. He must urge the patient to make a statement about the induction of criminal miscarriage.

• If she refuses to make a statement, he should not pursue the matter. He must treat her to the best of his ability. He must consult a professional colleague.
Duty of a doctor in a case of criminal abortion :-

- If the woman dies, he should not issue a death certificate, but should inform the police for making arrangement for postmortem examination.
- Under sec. 312 IPC whoever voluntarily causes criminal miscarriage is liable for imprisonment upto 3 years and or fine and if the woman is quick with the child the imprisonment may extended upto 7 years.
- In this case, both the person procuring the miscarriage and the woman are liable for punishment. If this case, both the person procuring the miscarriage and the woman are liable for punishment.
Duty of a doctor in a case of criminal abortion:

- If the miscarriage is caused without the consent of the woman, the imprisonment may be up to 10 years under Sec. 313 IPC.
- If the woman dies from the act of criminal abortions, the punishment is up to 10 years under Sec. 314 IPC, under Sec. 316 IPC causing death of quick unborn child by any act amounts to culpable homicide, and the punishment may extend up to 10 years of imprisonment.
The civil and criminal negligence

- Professional negligence is absence of reasonable degree of care and skill or willful negligence of a medical practitioner, in the statement of a patient so as to lead bodily injury of death of the patient.

- The question of civil negligence will come, when a patient in case of death, any relative bring suit in a civil court for realization of compensation from his doctor, if he has suffered injury due to negligence.

- Similarly the doctor can bring a civil suit for realization of his fees from the patient or his relatives who refused to pay the same on the ground of professional negligence.
Examples of civil negligence

- Loss of earning of the patient due to negligent act of the attending doctor.
- Expenses incurred eg. Hospital expenses, special investigation, special diet, etc.
- Reduction of expectation of life of the patient due to wrong treatment.
- Reduced enjoyment of life of the patient.
- Pain and suffering, either physical or mental.
- Loss of potency
- Death of the patient.
• A doctor is not liable for an error of judgement or of diagnosis, if he has secured all necessary data in which to base a sound judgement.

• Contributory negligence on the part of a patient is a very good defence for negligence.
Criminal negligence

- Criminal negligence occurs when the physician exhibits gross lack of competency, gross inattention, criminal indifference to the patient’s safety or gross negligence in the secretion and application of remedies.

The followings are some examples of the criminal negligence:

- Gross mismanagement of the delivery of a woman.
- Gross incompetent administration of a general anaesthesia.
Criminal negligence

- Administration of a wrong medicine into the eye causing loss of vision.
- Amputation of wrong finger or operation on a wrong limb.
- Leaving instruments, tubes, sponges or swab in abdomen.
- Performing criminal abortion
A single professional act by a physician may subject him to both civil and criminal liability, eg, if a physician performs an unauthorized operation on a patient, he may be sued civilly for damages and prosecuted criminally for assault.

The doctor may have to pay damages in terms of monetary fine as well as convicted for criminal negligence under Sec.304A IPC with imprisonment up to 2 years or with fine or with both.
• Lastly, another very important medicolegal duty of the doctors is to hold medicolegal postmortem examination and to examine the victim girl and the accused person.
• Every doctor who has permanent registration number of State Medical Council is entitled to do this job.
• Although, it is the job of service doctor, the private practitioner may be asked to do this job during National Emergency. Hence, here is some idea about it.
Cases for medico legal postmortem examination

- All unnatural death cases.
- Sudden death, where cause of death is not known.
- All cases of death due to poisoning.
- Traffic accidents death cases.
- Death occurring during operation or under anaesthesia.
Cases for medico legal postmortem examination

- Death occurring in prison, police custody, jail custody, asylum, Borstal school, etc. Here, postmortem examination is to be done under Video Photography as per directive of Human Rights Commission.
- In case of dowry deaths. Here, postmortem examination is preferably to be conducted at least by two doctors.
- Death certified as due to postoperative shock or haemorrhage.
- In exhumation cases.
- Before holding medicolegal autopsy inquest is required from the police authority or Magistrate...
LEGAL PROBLEMS FACED BY THE DOCTORS.

- In the past, litigations were less in India, because people were not aware of their rights. In developed countries like U.S.A., U.K., Canada etc., there is Medical Law specially for medical profession.
- Unfortunately, there is nothing like Medical Law in India; so litigations are based on criminal Law, Law of Torts, Law of Contracts, Consumers’ Protection act, etc.
- Medical Law does not mean doctor’s negligence. It includes doctor-patient relationship, their duties and rights, M.T.P. Act, Family Planning etc. etc.
LEGAL PROBLEMS FACED BY THE DOCTORS

• When a doctor is showing absence of reasonable degree of care and skill in treating his patient, he may be charged with Civil negligence.

• When a doctor is showing gross lack of competency and gross inattention, he may be charged with Criminal negligence.

So the doctors should possess some legal knowledge to protect themselves from negligence.
SOME LAWS IN RELATION TO
MEDICAL PRACTICE

- Criminal Law.
- Civil Law.
- Consumer Protection Act.
- Medical Councils
- Other Laws.
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<td>193 IPC</td>
<td>Perjury</td>
<td>Imprisonment upto 7 yrs. +/- Fine.</td>
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<td>Issuing False certificate</td>
<td>-do-</td>
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<td>191 IPC</td>
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<td>Indecent assault</td>
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<td>497 IPC</td>
<td>Adultery</td>
<td>Imprisonment upto 5 Yrs. +/- Fine</td>
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The legal protection for Doctors

• Sec. 88 to 93 IPC
• To follow the rules of consent.

**CIVIL LAW :-**

• This can be divided into TWO groups:-
  • Law of Contract
  • Law of Tort.
Here, there is a specific contract between a patient and a doctor, which may be ORAL, WRITTEN or IMPLIED one, under which the doctor is supposed to treat the patient and the patient is liable to pay the specific or reasonable fees to the doctor.

In operative cases, usually the contract is between surgeon and patient ONLY; and anaesthesists, cardiologists, paediatricians, and other doctors may NOT be a party.

They have an implied contract with the surgeon only. Hence the surgeon may be vicariously liable for his negligence.
LAW OF TORT.

• Certain duties are imposed on every person in the society irrespective of monetary consideration. Thus a doctor is also having certain specific duties towards his patient, paying or complimentary.

• “If a doctor commits an act, which other reasonable doctor of his standard would not commit; or a doctor OOMITS to do something which other doctor would certainly do is a NEGLIGENT ACT”. The doctor is liable for that under Law of Tort.
CONSUMER PROTECTION ACT:

• This act is most hot subject in the medical world today. This act is enacted in 1986 as a part of an international agreement seeking to provide for better protection to the interest of consumer and to provide speedy and simple redressal to consumer’s disputes.

• The purpose of the act:

• To protect the interest of the consumers of different commodities for which they pay but do not get standard quality of service.

• Example – daily commodities of use, Banking, Food Transport, Electricity supply et etc.

• Procedure of lodging complaints:
• At any centre mention below with/without engaging a Lawyer and paying a nominal fees.

• At **District level** – District Consumer Dispute Redressal Forum - to be chaired by a District Judge and two other members. Compensation towards damages upto Rs.20 lakhs

• At **State level** – State Consumer Dispute Redressal Commission – chaired by a High court Judge and two other members. Compensation above Rs.20 lakhs to 1 Crore.

• At **National Level** – National consumer Dispute Redressal Commission – chaired by a Judge of Supreme Court and four other members. Compensation more than Rs.1 Crore.
Apprehensions :-

- Bad doctor-patient relationship.
- Tendency for extensive laboratory investigation.
- Tendency to make different Indemnity/Insurance policy for paying compensation.
- The treating Physician will charge more from the general patients.
A patient can file a complaint with the respective council for doctor’s negligence. Unfortunately the council has power to punish the doctor but does not have the power to order compensation even if the negligence is proved.

The punishment which can be given to the doctor by the Medical Council/state Medical Council —

- Issuing a warning notice.
- Temporary erasure of name from Medical Registrar.
- Permanent erasure of name from Medical Registrar.
OTHER LAWS:

- Under M.T.P. Act, Drug Act, Bombay Nursing Home act etc. patient can file a complaint to the respective authority. Here also they do not have power to order compensation
CONCLUSION :-

- To avoid all the medicolegal problems certain precautions to be taken :-
  - Keep full and accurate Medical Records.
  - Employ standard care and skill
  - Do not fail to get written informed consent.
  - Diagnosis to be confirmed by laboratory tests.
  - Proper investigation to be advised.
  - Proper immunization schedule to be followed.
• Sensitivity tests to be done where applicable.
• When diagnosis is obscure consult another senior/specialists.
• Do not criticize another practitioner.
• To check the condition of the equipment frequently.
• The drug to be identified with expiry date before introduction.
• The patient must not be abandoned.
• No female patient should be examined without any female attendant.
• Anaesthesia should be given by a qualified person.
• NEVER GUARANTEE A CURE.
PROTOCOL FOR POLICE CASES & RAPE/SEXUAL ASSAULT.

- A patient when comes to ER/OPD of Govt. Hospital C/O any injury/Accidental/Self-Infected/Homicidal/Poisoning/Sex assault/Burn injury etc. proper reporting in papers supplied from Police Dept. – the named as indoor Police cases/outdoor police cases where history taken and other points are written.

- The form should be properly filled up with signature of patient/patient party and witness should be taken marks of identification of patient should be noted.

- The size of injury in which part of the body the injury is present. Age of injury, type of weapon used should be noted.

- If there are minor injury patient should be treated properly at ER with advice to attend SOPD/OPD next morning and or to attend ER in necessary.
If patient is unconscious and unknown then

- Name of persons brought the patient should be noted with full address and their signature should be taken.
- The valuable materials with the patient should be seized. These should be properly packed labeled and handed over to Ward Master with records kept in the ward.
Other special points which should be done in the ward.

- After receiving the patient in the ward the doctor and Nurse should note for –
  - Airway – if obstruction, proper management
  - Bleeding – if present, proper management
  - Cardiac – condition of the heart should be noted with B.P./Pulse.
- The weapon should be seized. It should be noted that whether the patient come alone or with some persons.
- If police personnel brought the patient then his name should be written in the form.
RAPE/SEXUAL ASSAULT

• The victims and accused should be examined as per written prayer or/and order from Honorable Magistrate (S.D.J.M.).

• The written consent of victim and accused must be taken in form.

According to the Bureau of Police research and Development the number of rape cases per lakh population has risen continuously in India over the year,

• the highest volume of rape cases was registered in Sikkim followed by Jammu and Kashmir, Madhya Pradesh, Assam and West Bengal.

• Among the major cities in India Delhi has shown the highest number of rape cases in one year followed by Bombay compared to other metropolitan cities in the world.
What is Rape?

- Rape is defined as an unlawful carnal knowledge of a female for and against her will.
- Carnal knowledge is defined as penetration of genitalia no matter how slight by the penis occurs while the female is sleeping unconscious or under the influence of alcohol or drugs.
- A male who is sexually assaulted is sodomized.
- Sodomy is oral or anal penetration.
Nursing Alert :-

- The management of the sexual assault is important but immediate physical health should be ensured first.

- A complete primary and focused assessment should take place being alert for signs of internal haemorrhage, shock or respiratory distress but victim is suffering from trauma in the form of physical assault the trauma should be managed in the order of established priorities.

- Most emergency department have commercially prepared rape evidence collection kits as well as written protocols for the treatment of injuries, legal documentation and sexually transmitted disease and pregnancy prevention.
Interviewing the patient:

- Consent should be obtained for the examination of collecting of swab/evidence for release of information to law enforcement agencies.
- Record history of event in the patient’s own words.
- Ask the patient has bathed, gargled or brushed teeth changed clothes or urinated defaecated since attack – may alter interpretation of subsequent findings.
- Examine rectum for signs of trauma, blood and semen stains.
# Interviewing the Patient

- Record time of admission, time of examination, date and time of sexual assault and the appearance of the patient.
- Document any evidence of trauma – dislocation, bruises, laceration, secretion, torn and bloody clothing.
- Record emotional state.
- All collected samples & records to be enveloped by sealed.
Intervention: Preparing for physical examination

- Assist the patient to undress over a sheet large piece of paper to obtain debris.
- Protect patient against sexually transmitted diseases such as gonorrhoea, H.I.V. etc.
- Immediately obtained (positive swab taken in the immediate post rate period will only reflect existing disease).
- Place each item of clothing in a separate paper bag (plastic bags promote moisture retention which may lead to formation of mold and mildew which can destroy evidence).

- Label bags appropriately: give to appropriate law enforcement authorities and has to be sealed.
Physical Examination.

- Examine the patient (from head to toe) for injury especially to the head, neck, breasts, thigh, back and buttocks.
- Assess for external evidence of trauma (bruises, laceration, stab wounds).
- Inspect fingers for broken nails and tissue and foreign materials under nails.
- Document evidence of trauma with body diagrams or photographs.
- Assist in conducting oral examination to determine secretion status of patient compared with that of assailant.
- Obtain a saliva specimen
- Take prescribed cultures of gum and tooth areas.
Providing follow-up services.

- Make an appointment for follow up surveillance for pregnancy, sexually transmitted disease and HIV counseling.
- The patient should be accompanied by family member or friend when leaving the health care facility.
- Inform the patient for counseling services to prevent long term psychological effects. Counseling services should be made available to the family.
Obtaining Laboratory Specimen

- Collect vaginal aspiration which is examine for presence or absence motile/non-motile sperm.
- Use sterile swab to draw from vaginal pool for acid phosphatase, blood group, antigen of semen and precipitation test against human sperm and blood.
- Label all specimens with name of patient, date, time of collection, body area from which specimen was obtained and names of personnel collecting specimens to preserve chain of evidence, give to designated person (crime laboratory) etc. and obtain an itemized receipt.
Examination of the Victim:

It must be remembered that the police or court has no power of compelling a woman to show the private parts of her person for examination of medical practitioner, male or female.

Conclusion:

Rape has been described as:

“not an act of sex but an act of violence with sex as the primary weapon”. It may lead to a wide variety of physical and psychological reactions.