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LEGAL AWARENESS IN DENTISTRY



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Introduction

A dentist is a healthcare professional providing care for the patient, and duty imposed upon him to practice dentistry at the certain standard of care. A breach of this duty that results in injury to the patient is called negligence. Such negligence can result in lawsuit against the dentist. Dental practitioners must be aware of the legal elements, as there are greater possibilities of dentist encountering such cases, particularly in the context of patient empowerment.

Negligence: Failure to use the degree of care considered reasonable under the circumstances, resulting in unintentional injury is negligence.

- 1) Dentist owed a certain Standard of Care
- 2) Dentist did not maintain that standard
- 3) There was an injury resulting from the lack of care.
- 4) There should be a connection (proximity) between the negligent act and the resultant injury

Dental negligent acts

1. Any doctor can take up an emergency. A patient cannot be refused treatment on the ground that it is a medico legal case and therefore to be seen in a government or

- approved hospital. Failure to attend an emergency is negligence.
2. Prevention of infection should not be restricted to only the health provider. It is the dentist's responsibility to prevent cross infection between patients. Endangering the health or lives of other patients (even without injury) can invite criminal negligence (Sec 336 IPC).
 3. All the patients have a right to information about the procedure and possible outcomes. Failure to explain may be considered a negligent act.
 4. Another cause of negligence usually involves general dentists' attempt to treat beyond their level of competence and failure to refer cases to the appropriate specialist. ^[2]
 5. Lack of informed consent is a cause of malpractice action, and without it, battery (unlawful touching) can be alleged. ^[1] In practical terms, this means physically or emotionally harming the patient.

In the consent

 - There must be understanding of problem, that is, a diagnosis
 - The proposed treatment and any alternative treatments must be fully explained.
 - No warranties or guarantees can be given.
 - Authorization must allow for a change in plan if an unproposed circumstance arises.
 - Discussion of all sequel and side effects of proposed/current treatment plan must be given.
 6. Dentist must engage in acceptable practice that is usually the product of evidence based dentistry as opposed to customary practice, which is usually anecdotal. ^[4] For instance, arsenic has been traditionally used to devitalize the pulp in endodontic. However, current endodontic practice unequivocally disapproves the use of arsenic due to potential complication, it may therefore be said that, while the use of arsenic was customary it is not an accepted practice today. A complication produced by arsenic, may therefore be said to be negligence.
 7. Failure to give advice clearly results in complication. Dentist must give clear instructions regarding diet and postoperative care.
 8. If prescriptions are not clear and if they do not have proper instructions, the dentist is deemed to have been negligent. ^[5]
 9. Failure of dentist to advice a crown for root canal filled tooth with significant loss of tooth substance can result in fracture of tooth. Dentist will be held liable. Similarly, making defective dentures is a negligent act. ^[6]
 10. Accidental ingestion of crowns, dental instrument, teeth etc. can also be considered as negligence.
 11. Patient was given local anesthesia without test dose and developed anaphylaxis and died. Dentist will be held liable.
 12. Under Public Liability Insurance Act, a dentist can be held liable for harm caused to the public by inadvertent exposure of

harmful substances like mercury, arsenic or for those matter even radiations. ^[5]

Non-negligent acts

1. Not obtaining a consent form in an emergency is not negligent.
2. Patient's dissatisfaction with the progress of treatment cannot be called negligence.
3. Not getting desired relief is not negligence.
4. Charging, what the patient thinks is exorbitant is not negligence.
5. When patient does not follow advice of the doctor and does not get satisfactory results, dentist cannot be held negligent.

Dentists are liable under four heads

1. Tortuous liability
2. Contractual liability
3. Criminal liability
4. Statutory liability

1. Tortuous liability (Civil liability)

- a. Primary liability
 - b. Vicarious liability
- a. Primary tortuous liability: When a dentist is directly liable for an act of negligence in his clinic or hospital it is called primary liability. Most dental negligence would come under this category. The remedy for breach of tortuous liability is unliquidated damages as awarded by the judge; it is usually in the form of compensation by cash.

- b. Vicarious liability: Dentist who is employed by a hospital or institution is often not primarily responsible for negligence. They may be said to have vicarious liability through the hospital. The hospital has the liability for the negligence of an employee. However, if the patient is admitted by a dentist in his personal capacity, then the dentist will be personally liable.

2. Contractual liability

In a doctor-patient relationship, an implied contract is established when a dentist accepts a patient for treatment. A breach of any aspect of this implied contract, where the dentist is under duty to, treat with care as well as continue to treat and not terminate until patient is cured or patient discontinues treatment, may be considered a contractual liability.

3. Criminal liability

This liability normally lies with an identifiable individual or groups of individuals. However, recent trends indicate that hospitals also may be held vicariously liable just as in civil liabilities. Criminal liability is penal and involves punishment in the form of imprisonment or fine or both. Criminal negligence is considered to be a crime against society and not just the aggrieved party.

The important offences inviting criminal liability with regard to negligence are:

1. Section 304A Indian Penal Code (Sec 304A IPC) - Negligent homicide. A rash or negligent act resulting in death, e.g. death on the dental chair.

2. Sec 336 (IPC) - An act endangering the life of a person (even if there is no injury), e.g. extracting a tooth for a patient with valvular heart disease without antibiotic prophylaxis against endocarditis (even if he does not develop endocarditis).
3. Sec 337 (IPC) - A rash or negligent act causing simple injury, e.g. pain and swelling after extraction due to negligent extraction.
4. Sec 338 (IPC) - A rash or negligent act resulting in grievous injury, e.g. fracture of jaw during extraction due to excessive or improper force..

It is important for the dentist to be aware of these liabilities and understand his rights. For example, bail is a matter of right in the above situations and it is to be given by the police officer affecting the arrest based on the surety given by a colleague.

5. **4. Statutory liability**

Dentist is liable if there is any infringement of statutes. They then become accountable to a statutory body. The liability depends on the kind of infringement and the provisions in the statute to deal with it. Dentists may also be liable to other statutory bodies such as Pollution Control Board.

a. **Who is liable?**

- Dentists with independent practice rendering paid services.
- Private hospitals charging all.

- All hospitals having free as well as paying patients; they are liable to both.
- Doctors/hospitals paid by an insurance firm for treatment of a client or an employer for the treatment of an employee.

b. **Who is not liable?**

- Dentists in hospitals which do not charge of their patients.
- Hospitals offering free services to all patients.

What should a dentist do in the event of a medical mishap?

When something untoward happens following a diagnostic or therapeutic procedure, or when a patient or relative makes a complaint, the dentist must take appropriate steps, some of which may be:

1. Complete the patient's record and recheck the written notes.
2. Be frank enough and inform clearly of the mishap. Show that you were genuinely concerned about the unfortunate mishap. Answer all the queries of patient / relative and do not mind their repeated questioning. Keep in mind the mental state of the close relatives / friends. Be compassionate, try to remain on the scene as long as possible, try to engage less excited attendants into discussion on the mishap and indirectly try to bring into focus the circumstances under which the mishap occurred. A high proportion of complaints are precipitated or escalated into legal action by a progressive

breakdown of the doctor-patient communication.

3. The Dental Associations can form groups / cells to advise and assist in such situations.

Legal Process

Dental negligence falls under section 2 (0) of the Consumer Protection Act (CPA) because Indian Dentist Act (IDA) had no provision to:

- entertain any complaint from the patient
- take action against dentist in case of negligence
- award compensation

The CPA was passed by the Indian Parliament in the year 1986 to safeguard and to protect the interest of consumers. Prior to the enforcement of this Act, cases against dentist were decided by civil courts and even under Indian Contract Act.

^[8] But the disadvantage of the latter was high cost and more time consuming.

Advantages of consumer protection act

1. Court fee is less.
2. Speedy justice.
3. Procedural simplicity. Complainants can state their own case without a lawyer.
4. A non-intimidating atmosphere and encouragement to settle case without too much of formalities and lengthy procedures.

Consumer Courts

1. District Forum (one or more district form for each district). Jurisdiction up to Rs20 lakhs.
2. State Commission (one state commission for each state) Jurisdiction above Rs. 20 lakhs and up to Rs. 1 crore. The State Commission also serves as a supervisory agency and has the power to call for the records and pass appropriate orders in any dispute pending or decided by the District Forum.
3. National Commission (one national commission for entire country) Jurisdiction above Rs. 1 crore. The National Commission, similarly, acts as an appeal agency for decisions of the State Commission. Where the National Commission has served as the court of first instance the Supreme Court of India acts as the court of appeal.

Procedure

Allegation can be related to deficiency causing discomfort, loss of activity, loss of money, loss of workdays, quality of life etc.

1. As provided under section **24A of CPA**, a complaint has to be filed within two years of date on which cause of action arises.
2. As per **section 13 of CPA**, first a copy of complaint has to be sent to dentist directing him to give his version with in a period of thirty days, which may be extended up to 45 days. After 45 days, if no reply is provided, then the court orders contempt proceedings against the dentist.

3. During reply, dentist may deny the allegation of the complaint.
 - The machinery is required to decide the cases speedily i.e. within a period of three months. If, after the proceedings, the District Forum is satisfied that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things:^[7]
 - To return to the complainant the charges paid.
 - Pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
4. Any person aggrieved by an order made by the District Forum may appeal against such order to the State Commission or National Commission within a period of 30 days from the date of the order. The State Commission may entertain an appeal after 30 days if it is satisfied that there was sufficient cause for not filing it within that period. The State or National Commission is required to decide the appeal as far as possible in their 90 days from the first date of hearing.
5. Where a complaint instituted before the District Forum, the State Commission or the National Commission, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing,

dismiss the complaint and make an order that the complainant shall pay to the dentist such cost, not exceeding 10,000 rupees, as may be specified in the order.

6. Where dentist or the complainant fails to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, dentist or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than 2,000 rupees but which may extend to Rs 10,000 or with both. In exceptional circumstances the penalties may be reduced further.

Conclusions:

Dentists are often ignorant about the laws governing their profession. There is the need for maintaining the records officially and professionally to protect against any commercial, legal and medico-legal litigation. Records and CCTV footage are the most important factors needed to prevail in the lawsuit. Written records, including medical and dental history, chart notes, radiographs, photographs and models, are the only available guidelines from which to deliberate in a negligent lawsuit and must be meticulously kept.^[3] All records must be contemporaneous, and must be signed and dated. Legally, dentist written records carry more weight than patient's recollections.

The legal process is difficult and distressing to navigate, so it is best to avoid this when possible. Once a negligent lawsuit is filed against the dentist, a complex legal maze is opened. A dental practitioner needs the help of a competent attorney who specializes in such litigation. The best defense is avoiding the lawsuit in the first place.

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