

## A REVIEW ON- MEDICAL MALPRACTICE AND MEDICAL NEGLIGENCE

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### ABSTRACT

Lifestyle has become very fast paced and career oriented. Owing to the new fast paced work pattern, many a compromises in quality of services are happening. Medical services also are facing such a situation. Advent of internet and information technology has led the common health seeker to be better informed about medical proceedings, however we find the same can be used against them. This often leads to Medical Malpractice and/or Medical Negligence which hampers physician-society bond. Medical Malpractice and Negligence are similar sounding terminologies, which are often misquoted as synonyms. Malpractice is always with an intention and deserves strict penalties and punishment. Malpractice is always initiated by the physician/institute. Negligence is when prudent physician/attendant/assistant or healthseeker involves in act of omission or commission which invariably results in harm to the healthseeker. As both are hazardous to a healthy society, it is essential to understand them to curb it

**KEYWORDS:** Medical Malpractice, Medical Negligence, Physician & Health seeker

### INTRODUCTION

It becomes the bound duty of all registered medical practitioners, irrespective of their registration in different states, to obey and follow the rules and regulations stipulated to the particular state/council<sup>1</sup>. Practitioners are obligated to discharge their duties with utmost professional manner, such as examination- investigations, prescription of appropriate medications, instructions on usage of said medications, etc. In MLCs such as unnatural death/ suspicious death, it becomes mandatory for the concerned physician to report such cases to the concerned authorities. Physicians ought to abide by and practice the stream of medicine in which they are expertized<sup>2</sup>Medical

science is having its own set of ethics, rules and regulations and baseline level of skill which is mandated by various governing bodies<sup>2</sup>. Any aberration/ deviation in these, results in either Medical Malpractice or Medical Negligence; which attracts law suites, punishments and penalties<sup>2</sup>Knowledge of both is highly essential and every practicing physician should be aware of it and should be in a process of continuous updates.

**Medical Malpractice:** Malpractice means the behavior outside the bounds of what is considered acceptable or noteworthy or of its membership by governing body of a profession<sup>3</sup> in simpler terms it means

disgraceful or dishonorable conduct that someone of that stature would not indulge in.

The 6 As of Malpraxis is<sup>4</sup>: -Association, Advertisement, Alcohol, Adultery, Abortion and Addiction

1. Association	4. Adultery
2. Advertisement	5. Abortion (Illegal)
3. Alcohol	6. Addiction

**Table 1.1 The 6 As of Malpraxis**

**1. Association:** - Association with unqualified person/unethical person.

Eg:- a. Employment of an unqualified person

b. Assisting to an unqualified person

c. Being assisted by an unqualified Person

d. Performing Ghost Surgeries

e. Issuing Certificates to cover up acts of an unqualified person

f. Covering up acts of midwife / attenders / assistants

g. Dichotomy: - Splitting of fees in an unethical way.

**2. Advertisement: Occurs in 3 ways**

**a. Direct** → (i) Clinic sporting an abnormally large display board (ii) Through Telephonic calls (iii) Issuing notifications in Lay Press

**b. Indirect** → (i) Contributing of articles to Non-medical journals (ii) Repeated media appearances (iii) Issuing Pamphlets and Handbills

**c. Canvassing** → By employing Touts and Agents for procuring health seekers

**1. Alcohol:** - To be in an inebriated state/under the influence of alcohol during official duty hours.

**2. Adultery:** Getting involved in an illicit sexual relationship with the health seeker

**3. Addiction:** - To be involved in induction of addiction of certain drugs to the health seeker or the physician themselves be addicted to various drugs.

**4. Abortion (Illegal):-** To conduct illegal abortions, that is unjustified abortions.

Medical Malpraxis can also refer to the following: -

**5. Failure to diagnose or wrongful diagnosis:** - In medical science, it is essential to arrive at the appropriate diagnosis in order to deliver the best health care services. Appropriate usage of clinical and laboratory investigations are essential.

**6. Misinterpretation or Overlooking laboratory findings**

**7. Unwanted Medications and Surgeries:** - Posting health clients for surgeries which can be resorted by medical applications or prescription of unnecessary medications when it is not essential

**8. Failure to have adequate Follow ups by the physician towards the health seeker**

**9. Premature discharge by physician**

**10. Failure to advice valid laboratory investigations**

**Medical Negligence**

Medical negligence is Absence of reasonable care and skill or willful negligence of a medical practitioner in the treatment of healthseeker which causes bodily injury or death of the healthseeker<sup>5</sup>. In simpler terms, it means person (plaintiff/physician/attender), fails in following their duties strictly.

**4 Ds in Negligence**

Duty, Dereliction, Direct Causation & Damage

Although there are 4 Ds<sup>6</sup> classically mentioned, they are not mutually exclusively. That is one or more or all can occur together.

1. Duty
2. Dereliction
3. Direct Causation
4. Damage

**Table 1.2 4 Ds in Medical Negligence**

**1. Duty:** - Failure in maintaining optimum professional relationship with Health seeker and attenders.

**2. Dereliction:** - **Failure** in maintaining baseline standard care, precautions and violation of level of skills.

**3. Direct Causation:** - **Failure** of due care that lead to the damage.

**4. Damage:-** Causing a compensable injury. The Medical negligence is bound to happen in two ways, that is; **Act of Commission** and **Act of Omission**.

→**Act of Commission:** - Doing something which a prudent physician, under any circumstances would have not done.

→**Act of Omission:** - Not doing something which a prudent physician, under any circumstances would do.

**Types of Medical Negligence**

<b>5 C's of Medical Negligence</b>	Civil Negligence
	Criminal Negligence
	Corporate Negligence
	Contributory Negligence
	Composite Negligence

**Table 1.3 5 Cs in Types of Medical Negligence**

**1. Civil Negligence:** - Any act which doesn't cause major/ sever bodily injury or death, which is often settled by monetary compensation. Eg: Attending Physician skips one visit to admitted health seeker.

**2. Criminal Negligence:** -A Gross negligent act from Physician Caused death or severe harm to the patient and cannot be solved by monetary compensations and have to be tried under criminal offenses. Eg: Leaving behind the forceps inside abdomen and closing the suture.

**3. Corporate Negligence:** The corporate hospitals have duty to properly select the persons of professional competence. The hospitals may even be duty bound to intervene actively where a physician is negligent and prevent errant staff from endangering health seekers. The hospitals have better monitoring over their staff.

**4. Contributory Negligence:** -Any unreasonable conduct or absence of ordinary care on part of the health seeker or their attendants, which when combined with physician's negligence contributed to the Injury complained. Without that negligence, the injury would have not occurred. Eg: in a prescription, neither the physician explained the instructions of usage, nor the health seeker asked for the instructions of usage.

**5. Composite Negligence:** -When the negligence of two or more persons result in the same damages. The Composite tortfeasors are jointly and severally liable for the damages, meaning that any of them can be responsible to pay the entire amount, no matter how unequal the negligence of each party was in the act.

Eg: A surgeon over rules Standard Operating Procedures (SOP) of a surgery but tries different untested method without proper precaution, the attendant/ward boy fails to provide sufficient immobilization

and post-operative care and also the hospital where they employ such incompetent staff despite being aware of their poor skills resulting in gross injury to health seeker undergoing surgery.

Sl	Features	Medical Negligence	Medical Malpraxis
1	<b>Offense</b>	Absence of proper care and skill for that level	Violation of Code of Ethics of both Legal as well as medical
2	<b>Duty of Care</b>	Mandatory that proper duty of care is proved to be absent to file a case by the appellant	Not necessarily a mandated feature in Malpraxis. A duty conscious physician may still be guilty.
3	<b>Damage to person</b>	Damages are always sustained by concerned party.	Need not be an important feature.
4	<b>Trial</b>	Dealt in Civil courts (Civil negligence), Criminal courts (Criminal negligence ) and Consumer courts (Both the above)	Dealt by State Medical Council/ Concerned medical official body
5	<b>Punishment</b>	Fine and/or imprisonment as mandated by concerned courts.	Erasure of Name from Register and cancellation of legal practice along with specific punishments and penalties as governed by law.

**Table 1.4 Differences between Negligence and Malpraxis<sup>7</sup>**

## DISCUSSION

Medical negligence is often a chance observation and unintentional, but we need to be wary of extent and gravity of damage it can cause. Constant updates in knowledge and skills of physician as well as health seeker will prevent issue of negligence. IPC sections dealing with Medical negligence are:

**1. Section 304A<sup>8</sup> of IPC Causing death by negligenceshall** be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

**2. Section 336<sup>9</sup> of IPC Act endangering life or personal safety of othersshall** be punished with imprisonment of either description for a term which may extend to 3

months, and/or with fine which may extend to Rs. 250

**3. Section 337<sup>10</sup> of IPC act so rashly or negligently as to endanger human life, or the personal safety of others,** punished with imprisonment up to 6 months, and/or with fine up to Rs. 500

**4. Section 338<sup>11</sup>Causing grievous hurt by act endangering life or personal safety of others** punished with imprisonment up to 2 years, and/or with fine which may extend to Rs. 1000

Malpraxis; however, can be curbed only when physician adheres to morals and ethics of medical profession, and also actively acts against miscreants. Malpraxis is on the raise these days especially Dichotomy and Ghost surgeries. Proactive reporting will put a

check to these. Stated below are the rules that govern specific Malpraxis.

**1. Advertisement** – Clinic boards come under purview of Clinical Establishment Act 2010 others Under the ambit of Drugs and Magical Remedies Act 1954

**1.1 First offence** – Fine and/or imprisonment for 6 months

**1.2 Subsequent offence-** Fine with imprisonment for 1 year or more

**2. Abortion (Illegal) – Section 312 of IPC<sup>12</sup>**

**1.1 Pregnant woman without quickening** – 3 years imprisonment

**1.2 Pregnant woman with quickening** - 7 years imprisonment with fine.

**3. Addiction** – as dictated by Chapter IV of Narcotic Drugs and Psychotropic Substances Act (NDPS Act) 1985

**4. Adultery - Section 497 of IPC.** Currently decriminalized and cannot be tried under criminal offence but can be tried under civil offence.

The following points could be beneficial to avoid mishaps

Perfect and precise documentation. It's always better to have sufficient evidence/data including photography, videography and audio documents. Also keeping digital archives and soft copies are highly essential

1. Written consents are always preferable
2. Maintaining Optimum Health Seeker – Consultant interactions would ease tensions
3. Use of Advance software for management is also recommended as it could decrease negligence.
4. Exercise professionalism at every juncture
5. Stay up to date on current trends and scenarios
6. Empathize with your health seeker.

7. Always refer to specialists when in doubt. Never indulge in grandiose

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