Medical Negligence

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I solemnly pledge myself to consecrate my life to the service of humanity;
I will give to my teachers the respect and gratitude which is their due;
I will practice my profession with conscience and dignity;
I will respect the secrets, which are confided in me, even after the patient has died;
I will maintain by all the means in my power, the honour of the noble traditions of the medical profession;
My colleagues will be my brothers;
I will not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patients;
I will maintain the utmost respect for human life from its beginning even under threat, and I will not use my medical knowledge contrary to the laws of humanity;
I will make these promises solemnly, freely and upon honour.
Hippocratic Oath
Definition of Faults

- **Malpractice**

Medical Council Act: “includes a failure to exercise due professional skill or care, which results in injury to or loss of life of a person.”
Definition of Faults

- Medical Negligence

  Medical Council Act: “includes failure on the part of a registered practitioner to exercise the proper and timely care expected from a registered practitioner”.

- Act of Omission

- Act of Commission
To succeed in a claim for negligence, a plaintiff patient must prove, on a balance of probabilities,

The following:

- The defendant doctor owed him a duty of care
- The defendant doctor breached that duty by failing to exercise the necessary level of care
- Harm and injury was caused by that breach and
- He suffered damages which was not too remote (i.e. it was foreseeable by the doctor)

“But for” test for proving causation.
“A doctor is not negligent if he has conformed with responsible professional practices”.

- A G.P must meet the standards of a competent G.P
- A Consultant Gynaecologist must meet the standard of a competent consultant in that speciality
A common practice might be declared not to be rightly accepted: (common professional practices might be wrong)

The judiciary find it acceptable to challenge medical opinion, but only when the latter has no rational basis.

There may be circumstances where the provision of information will be “so obviously necessary to an informed choice that no prudent medical men would fail to make it”.
Res Ipsa Loquitor

“the facts speak for themselves”

- can help a patient in situations where he cannot specify what exactly caused the injury.

- the doctor has to establish his innocence, rather than the patient having to prove the doctor’s guilt.
The egg shell skull rule

“take your victim as you find him”

the doctor is liable for all damages even if the damages are more serious because of the patient’s pre-existing illness or condition.
Civil Negligence (Malpractice)

- Failure in regard to the **contractual obligations by a doctor** when he agreed to treat a person.
- Burden of proving negligence and damage on a **balance of probabilities** lies with the patient plaintiff.
- A medical accident can be compensated but not the natural development of an illness.
- Claims for compensation may be based on:
  - *the tort of negligence*
  - *trespass to the person and battery; or*
  - *breach of contract*
Criminal Negligence

- Arises in case of death or serious injury to a patient.
- The degree of negligence must be so grave as to go beyond a matter of compensation.
- The doctor may be prosecuted by police or charged in a criminal court for culpable homicide.
Concurrent negligence by the patient and the doctor, resulting in delayed recovery or harm to the patient.

- Defence for the doctor in civil cases.
- Burden of proof on doctor.
Vicarious Responsibility

- Liability of the master (employer) in spite of absence of blame worthy conduct on his part.
- Negligence
- Employer responsible for negligent acts of his servants.
- Within the scope of his employment/range of services.
- Tort of occupier’s liability (e.g. visitor injured on hospital grounds).
The assailant is responsible for all the consequences of his assault – the immediate and remote – which link the injury to death.

Breach in continuity of events by entirely new and unexpected happening (not reasonably foreseeable).
Liability in Medical Negligence

Doctor

Patient

Non- medical staff

(Employer)

Institution
Doctor

- Time factor, workload (no. of patients)
- Fatigue – lack of concentration
- Experience / competence
- Referral to specialists (specialized centres)

Financial

- Medical certificate
- Easy money – illegal abortions
**Communication**

- **Other Doctors**
  - Monitoring & Follow up
  - Reports - Histopath, X-ray

- **Patient**
  - Withholding information
  - Not following doctors’ instruction

- **Institution (Employer)**
  - **Vicarious Responsibility**
    - Understaffing
    - Nursing
    - X-Monitoring
    - Others
    - X-Execution of doctor’s orders
    - Equipment
    - Unavailability/Faulty
    - Essential/Emergency drugs

- **Non Medical Staff**
  - Laboratory technician - lab. Errors, delays

**CONTRIBUTORY NEGLIGENCE**
ETHICAL ISSUES

- Professional relationship between colleagues
- Making disparaging comments about colleagues (in front of other colleagues, staff, patient party).
- Taking over a patient under care of another colleague without prior information to the latter.
- Proper referral of patients to other colleagues.
- Sharing of medical knowledge/new technologies + assistance to colleagues.
- “Overcharging” of patients.
FOLLOW UP OF PATIENTS

- During surgery/anesthesia, e.g. monitoring
- Especially after surgery/intervention
- Instructions/orders not executed properly
- Availability of treating doctor → Postoperative complications → Anaphylactic shock

- Handing over to other colleagues in case of unavailability
- Deficiencies in nursing care—monitoring of head injured patient
  - Delay in executing instructions
- Patient smelling alcohol: May mask certain signs in head-injured patient
- Wrongly tagging as alcoholic without excluding other diagnosis
- Follow up, monitoring + management of critically ill-patient especially in ICU
- Too many patients in casualty
REQUEST FOR INVESTIGATION

- Rationale for request
- Not seeing results of URGENT INVESTIGATIONS
- Unnecessary delay in requesting special investigations, e.g. CT scan
Use of decorative letter head

Over description of doctor’s qualities /competence (publicity)

Handwriting – wrong dispensing

Explaining to patient

Perception of indiscriminate prescription / over prescription of certain drugs (e.g. steroids) in chikungunya

Gastric perforation (in patient of chikungunya)
Death certificate issue

- Without examining corpse
- Cause of death (true?)
- Use of abbreviations
- Time of death
Medical certificate of sickness

Requirements of Medical Council Act

- Date of examination
- Full name and address of the patient
- Registered name and address of the RMP
- Signature of the RMP

Cases: Backdating and postdating diagnosis (confidentiality)

Not confirming identity of patient (patient in police custody)
Improper filling of other forms

- Identity of patient
  - Degree of urgency/when needed
  - X-match/type & screening
  - Type of products and quantity

E.g., Blood transfusion form
COMMUNICATION

Doctor-Doctor

Patient
Non Medical Staff
Scanty/ no clinical notes

Name of doctor

**Date and time of examination, diagnosis/D.D**

- Pre operative status
- Treatment/Operation notes
- Progress
- Investigations/Monitoring
- Handwriting-wrong dispensing
- Use of Abbreviations (CST, ISQ, ADS)
“If it isn’t written, it wasn’t done”

Four most frequent themes in case of a bad outcome:

1. Believe your monitors!
2. Record keeping
3. Surgical team agreeing as to what occurred
   (Avoid rushing to condemn)
4. Communicate with patient before and after
Flow Chest (common surgical accidents leading to Medical malpractice Suits)

- Blood Transfusion Mistakes
- Wrong Patient
- Paralysis from Splints
- Wrong Side of the Body
- Surgery on wrong Digits
- Failure to X-ray Fractures
- Tight Plaster Casts
- Anaesthetic Mishaps
- Retained Objects
- Medical Practitioner
- Surgical Errors (e.g. ligation of ducts)
- Removal of Wrong Organ
COMMUNICATION-DISCLOSURE OF INFORMATION

Good- Proper-Adequate……? 

Questioning-Listening-Responding-Explaining 

Precautions to comply with: 

➢ Disclose information only to the proper person or authority 

➢ Preserve confidences as far as possible (avoid idle conversation about patients, use “aliases”) 

➢ Do not disclose beyond what is required by the law and the situation 

➢ Document in patient’s record the reasons for and circumstances of the disclosure.
Situations where it is ethically and legally required to reveal information:

- When the patient consents
- To medical colleagues
- As a statutory duty (Re: Infectious diseases)
- As information to relatives
- In the interest of research projects
- In disclosure to court
- In the discovery of documents in court proceedings
- In the public’s interest
INFORMED CONSENT^{1} (BRAND)

- Benefits of treatment
- Risks of treatment
- Alternatives (other treatment options)
- No treatment (risks of)
- Documentation + signature (patient, doctor, independent witness)

- Material Risk
- The “Prudent Patient” Test
- Therapeutic Privilege
- Battery/Trespass
INFORMED CONSENT based on information about:

- The name of the operation
- The nature of the proposed treatment
- What the operation involves
- The potential complications
- The special precautions required postoperatively
- The limitations of treatment
- The success rate of the operation
- How the patient will feel after treatment
- What happens on admission
- Respect for **patient’s autonomy** (self determination)
- **Non-maleficence** (the duty to do no harm)
- **Beneficence** (contribute to patient’s welfare).
- **Justice** (equitable distribution of benefits and burden).
- **Fidelity** (truthfulness and medical confidentiality).
- **Veracity** (honesty).
Concerned with the conventional laws and customs of courtesy which are generally followed between members of the same profession.

A doctor should behave with his colleagues as he would like to have them behave with him.
Concerned with moral principles for members of the medical profession in their dealings with each other, their patients, and the state.

**AIM:** to honour and maintain the noble traditions of the medical profession
THANK YOU