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CONSUMER PROTECTION ACT: WHAT DOCTORS NEED TO BE COGNIZANT OF?

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Doctors seem to in the news for all the wrong reasons of late. Almost every day, there is some report about compensation being awarded to complainants for medical negligence. Currently, about 10,000 cases of alleged medical negligence are being heard in various courts in India against doctors and medical establishments. In fact, a survey carried out by Sairam Bhat of National Law School of India University, Bengaluru, showed that from 2010 to 2014, there was a 400% increase of such cases being filed by unsatisfied patients.[1] Moreover, it is projected that by the year 2020 (which is only 4 years away), there will be some official complaints or court case against 10% of health-care professionals.

This is alarming news and should be a wake-up call for all of us.

The article on "Knowledge of Consumer Protection Act (CPA) among Doctors from Government and Private Sectors of UT Chandigarh" by Aggarwal *et al.*, in this issue of the Indian Journal of Medical Sciences is, therefore, timely and documents the need for better understanding among the medical community.[2] The results of a survey of 440 doctors in Chandigarh area using 35 closed-ended questions showed that only 63.3% of the replies were correct answers. In other words, almost 40% were not aware of the laws applicable to us - and ignorance of the law is no excuse! Under the circumstances, a significant percentage of practicing, government, and academic doctors remain vulnerable in the eyes of the law.

1. Why are cases against doctors and health-care establishments increasing?
   Indians are living longer. Life expectancy of Indians has increased significantly - it was about 40 years in 1960, and by 2013, it has become 66.4 years.[3] Simultaneously, the incidence of diseases and illnesses is also increasing. India is the world capital for illnesses related to lifestyles such as diabetes mellitus, cancer, and cardiac ailments. This is coupled with the fact that more and more patients are willing to take medical treatment - even if there is no cure. Hence, we have a growing plus aging population with several co-morbidities that complicate medical treatment and the willingness to pursue treatment. The most important aspect is unrealistic expectations. Patients take their health for granted, ignore symptoms, present themselves to hospitals only in advanced stage and then expect to be cured instantly. They also have easy access to "Dr. Google," which provides a wide spectrum of unedited opinions that often have little relationship to peer-reviewed level one evidence. When this is coupled with greater consumer awareness, ease of access to Consumer Courts as well as a litigant mindset, it completes the recipe for galloping increase in cases of alleged medical negligence in India.
2. What are the avenues that a complainant can use when alleging medical negligence?
   A patient or his relatives have the option of any or all of the following when medical negligence is perceived by them. They can go to Consumer Courts, Civil Courts, and State/National Medical Councils and file a FIR in the local police station (which can lead to a case in the Criminal Courts). This is in addition to a formal complaint to the authorities of the health-care establishment. They usually opt for the Consumer Courts; since the application process is simple, it does not cost them much money, and the process is relatively fast (as compared to civil courts).
3. Who are the persons vulnerable to action under CPA?
   The Supreme Court Case of Indian Medical Association versus VP Shantha became a landmark case that brought the medical profession under the provisions of Section 2(1) (o) of CPA, 1986.[4] It is applicable to:
   a. Medical/dental practitioners doing independent medical/dental practice.
   b. Private and government hospitals.
   c. Medical/dental services paid for by an insurance firm.

In fact, all persons working in the health-care facilities can be held responsible in case there is negligence or deficiency of services. It is commonly perceived (and was also true till recently) that complaints are filed against doctors and health-care facilities. However, the term deficiency in service covers all those employed by hospitals. Hence, it would include nurses, technicians, hospital administrators, assistants, semi-skilled workers, and even security guards. There was recently a case, in which the courts found a hospital guilty of deficiency of services by its security guard because a patient fell off the wheelchair.[5]

4. Are any doctors or medical establishments exempt from CPA?
   The courts have decided that there are two circumstances when the CPA is not applicable. The first is for a charitable hospital that does not charge a patient any fees except a reasonable registration charge. The second is a government employee being covered by medical benefits provided by the government under its

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medical insurance schemes. It is important to note that if a hospital is providing both free services as well as paid services, it is presumed that the paid patients cross-subsidise the free patients.[4] Hence, patients treated free in such hospitals are also covered under the CPA. Of late, there is an image being circulated on the net that is alleged to be a letter from Punjab Government establishment that Government hospitals do not come under CPA. This letter or circular cannot overrule the Supreme Court order.[4]

5. What about the medical emergency and first aid?
   In case of a medical emergency, every patient becomes the consumer of the doctor on duty to whom the patient presents himself/herself. This is applicable even if the patient has not been seen previously by the doctor and even when the patient has not given any fees to the doctor.[6] This judgment arose out of a case filed by a "small human right activist and fighting for the good causes for the general public interest" under Article 32 of the constitution asking Government of India to issue directives for the provision of medical treatment instantaneously to preserve life in case of emergencies. He quoted Hindustan Times report with headlines "Law helps the injured to die." The Secretary, Ministry of Health and Family Welfare of the Union of India, the Medical Council of India, and the Indian Medical Association were added as respondents in this case. The judgment states that it is "the duty of a doctor in each and every casualty department of the hospital to attend such person first and thereafter take care of the formalities under the Criminal Procedure Code. The life of a person is far more important than the legal formalities."

This is applicable to all medical practitioners - whether registered provisionally or fully. When such a patient is brought claiming to have a medical emergency, medical screening examination is to be done to ascertain whether there is indeed a medical emergency or not. This should be done based on the circumstances and facilities available. If such an emergency exists that threatens the life of the patient, first aid should be provided to stabilize his condition. If facilities do not exist to manage the life-threatening emergency, provisions are to be made to shift him to higher center or doctor who can manage the emergency. While doing so, the transferring hospital or medical practitioner needs to provide necessary medical facilities including life support systems and qualified personnel within the capacity of the transferring hospital or medical practitioner. Where any ambulance or other transport vehicle is not available with the transferring hospital or medical practitioner, it or he shall call for the services of an ambulance or other transport vehicle, and in case of non-availability thereof, shall seek the assistance of any police authorities having jurisdiction over the area where the transferring hospital or the clinic of the medical officer is located for requisitioning such a transport vehicle.

In case the patient refuses to undergo such treatment, the duty of the concerned doctor ceases. In such circumstances, the doctor should take reasonable steps to obtain the person's written informed consent for refusal of treatment or transfer.

There are two important aspects, to support the doctors, which have been further elaborated upon in the Law Commission of India's 201st Report of 2006 on the emergency medical care of victims of accidents and during emergency medical condition and women under labor.[7]

a. The State Government was to frame a scheme, within 1 month from the date of commencement of the Act, for the purpose of reimbursement of the expenses incurred in the course of the performance of the duties. Unfortunately, this has not been done to the best of my knowledge.
b. The courts have stated "that Evidence Act should also be so amended as to provide that the Doctor's diary maintained in regular course by him in respect of the accident cases would be accepted by the courts in evidence without insisting the doctors being present to prove the same or subject himself to cross-examination/harassment for long period of time." Hence, it is expected of the members of the legal profession to see that members of the medical profession are not called to give evidence so long as it is not necessary.[7] Further, it is also expected that where the facts are clear, it is expected that necessary harassment of the members of the medical profession either by way of requests for adjournments or by cross-examination should be avoided. To take advantage of these provisions, when the doctor is called by the courts, he should present himself/herself wearing a white apron and announce his presence to the court with a request that his case is taken up first.

Doctors are intelligent and well educated. Doctors are also used to making instantaneous decisions on the basis of limited information available every day. This is the only way to manage patients since medicine is not an exact science (in medicine 2 + 2 is not always 4). The courts are aware that the functioning of the human body is still an unsolved mystery. Each patient is unique, just as each judicial case is different. Furthermore, patients can be treated in different ways. Simply because a patient is treated by one of the acceptable options of treatment and does not respond (failure of intended benefit), the patient cannot claim negligence.[8,9] This has been well described in what has become entrenched in judicial case laws as the landmark Bolam's Law.[9]

Finally, it is important to remember that actual written laws cover <1% of the cases that are brought to court. The rest are covered by what is termed as case laws. Hence, the legal implications continue to change and get refined

reflecting the changes seen in society. Once such subject is the consent from patients.[10] This and other subjects shall be dealt with in future issues of our journal.

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