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Misleading allegations against apollo hospital, gandhinagar for continuing ventilator on a dead patient

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Recently, the family of a deceased woman has blamed the Apollo Hospital located in Gandhinagar of ventilator on the patient even after she was dead (post pregnancy complications).[1] They made this allegation to the Rakhiyal police station of Dehgam Taluka, Gandhinagar district.

Sangita Patel, a 24-year-old pregnant lady, was apparently taken to Poojan Hospital in Naroda area. She delivered twins on September 16, 2016, after a cesarean operation. Unfortunately, soon after the delivery, her condition worsened – allegedly due to post pregnancy complications. She was then transferred to the nearby Apollo Hospital for expert management, where she was treated for 3 days – including being on ventilator support. At insistence of relatives, she was then transferred to the GCS Medical Hospital, a government hospital in Naroda. On reaching this hospital, she was declared brought dead. Post mortem was also carried out at this hospital – the report of which is awaited.

Bhavesh Patel, a relative of the woman, was reported to have talked to the Times of India and made the following allegations:

1. After delivery, the doctor of Poojan Hospital called an ambulance from Apollo hospital and insisted that we take our patient there.
2. At Apollo Hospital, on the 4th day of admission, when the relatives requested for discharge our patient, the doctors allegedly refusing to discharge her for around 6 h.
3. Final allegation is that doctors at Apollo Hospital kept the dead Sangita Patel on ventilator for 6 h and that is the reason they were not discharging her.

While there are several reasons why patient's relatives make such allegations for personal gain, we will discuss the case at face value on its merit.

Allegation No. 1: Why did the doctor at Poojan Hospital insist on transferring the patient to a higher center? If a patient has a medical emergency, it is the obligation of health-care personnel and institutions to provide emergency care to the best of their ability – even if outside their specialty. If such emergency aid was not provided, the concerned professional would be considered guilty of negligence – as per the hon'ble Supreme Court of India judgment in the Parmanand Katara case, which in now called a landmark judgment.[2]

This patient was getting appropriate treatment for delivery of her twins. During the course of treatment, she developed complications after the delivery of twins by cesarean surgery. Hence, this was converted into an emergency situation. Development of such a complication or failure of intended benefit of treatment is not considered negligence under the law.[3] The judgment of the Hon'ble National Consumer Dispute Redressal Commission in the case of Oxford Hospital versus KK Mittal has clearly stated, "It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection. The Indian Penal Code has taken care to ensure that people who act in good faith should not be punished. Sections 88, 92, and 370 of the Indian Penal Code give adequate protection to the professional and particularly medical professionals."

When faced with a situation where the condition of the patient changes and the required facilities are not available in the treating center, it is the duty of the treating physician to recommend and transfer the patient to a higher center that has better facilities/infrastructure/trained professionals. The final outcome was untimely death of the unfortunate patient actually reaffirms that the doctor(s) at Poojan Hospital were correct in suspecting that the patient's condition required better facilities. In fact, they should be congratulated for calling the ambulance from Apollo Hospital and insisting on transferring the patient to that center.

It is a common misconception that patients are shunted from one hospital to other without a reason. In this instance, the doctors at Poojan Hospital had the best interest of the patient in their minds, and their intention is clearly evident to help the patient by referring to a higher center.

Allegation No. 2: The doctors at Apollo Hospital refused to discharge the patient for 6 h when the relatives wanted to take the patient to another hospital. The patient has every right to select the treatment of his/her choice. They also have the right to refuse treatment. Preventing such a patient from leaving the hospital would amount to involuntary confinement and false imprisonment. If this allegation was true, then such an act would be a crime (wrongful confinement) as well as a civil wrong (false imprisonment). Section 340 of the Indian Penal Code defines the offence of "wrongful confinement," which is punishable under Section 342 (and related sections up to no 347).[4,5]

In this instance, the patient was in critical condition and was specifically transferred to this hospital for expert care including ventilator support. Obviously, the patient was not conscious and/or was not in sound mental condition to take an informed decision about her own treatment (including refusal of the same). According to Indian Laws, only the adult patient in the proper mental frame of mind has the right to give consent or refuse treatment. The relatives do not have the right to approve or refuse

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treatment on his/her behalf – again a landmark judgment by the Hon'ble Supreme Court of India in the Samira Kohli case.[6] In fact, in India, even living will/medical directive or "do not resuscitate" requests have no legal standing. However, hence life supports cannot be withdrawn.[7] Therefore, the doctors at Apollo Hospital were right to continue to treat this patient and keep her on ventilator support.

The patient's relatives may request for taking discharge against medical advice. This is permitted only after going through a thorough and detailed SOP to ensure that the patient/relatives are aware of the consequences of their decision and put their signature on the relevant documents.[8] The consultation within the medical team, approval from the administration, preparing the discharge document, going through the process of explaining to the relatives, and making the preparation for handing over the patient on ventilator support is a time-consuming process.[8] The relatives of Sangita Patel should actually be grateful to the team at Apollo Hospital to have allowed them to take this critically ill patient to another hospital, within 6 h of their request.

Allegation No. 3: The doctors at Apollo Hospital kept the dead body of Sangita Patel on ventilator for 6 hs. If this is true, this is also a serious allegation of cheating (presumably for financial gain). There is another example of such an allegation wherein an FIR was registered on the direction of Additional Chief Metropolitan Magistrate Sandeep Garg against the Oncology Department of Max Hospital, Saket, and Metropolis Health care - including under section 420 of IPC because the complainant patient claimed that he was a victim of the criminal acts of cheating.[9]

Our patient was brought to Apollo Hospital in critical condition requiring ventilator support. She was undergoing treatment for 3 days at the hospital. The complainant did not have any allegation of wrong doing at that time (first 3 days).

On the 4th day, the relatives wanted to shift the patient to a government hospital because they could not afford further treatment.[1] And because it took about 6 h after their request, for the discharge, they are alleging that the dead body of their patient was kept on ventilator support for 6 h. The patient was declared brought dead by GCS Medical Hospital. The post mortem will, of course, establish the cause of death (but is not a part of the complaint or allegation).

The root cause as to how this suspicion arose in the mind of the complainant could be due to the "jaundiced" manner in which society has begun to look at all medical outcomes as well as misinterpretation of the words used by the doctors at GCS Medical Hospital. The later occurs in one of three instances - when words (verbal or oral) are used casually or without understanding the implications of their legal meaning or deliberately kept vague when not sure of the situation. Little does the person making the statement realize that the words/sentence can lead to lengthy, frivolous, and traumatic legal proceedings (for all concerned parties). Let us look at the two critical aspects at GCS Medical Hospital.

1. Brought dead patient: While declaring a person as brought dead, the concerned health-care professional should be extremely careful in not making or implying any wrongdoing or foul play and/or attributing to anyone else. The hospital and personnel receiving the brought dead patient have no firsthand knowledge of what transpired before the dead body was seen by them. The cause of death, the time of death, and the circumstances in which the death might have occurred or what treatment was given are neither known to them nor can they be commented on. Their responsibility is to declare the patient as brought dead and inform the police. It is also their duty to write down what is told to them by the relatives as "alleged history of…" Often thoughtless comments about the state of the dead body or assumed preceding events are responsible for planting the seed of doubt in the minds of the relatives. And if this is done deliberately by the concerned health-care professional (either to show his level of knowledge/superiority or because of personal bias), it amounts to a crime of deliberately making misleading statements with malafide intentions - offence of defamation as defined and made punishable under section 499 and 500 of IPC.[10]
2. Time of death: Ascertaining time of death accurately is a very tricky situation, even at the hands of an experienced expert. First, one needs to keep in mind that there are three times of death (even if it may surprise you).[10]

a. The physiologic time of death, when the person's vital functions actually ceased
b. The legal time of death, the time recorded on the death certificate
c. The estimated time of death, the time, the medical examiner estimates that death occurred.

The only absolutely accurate determination of the time of death is if a person died in the presence of the physician or skilled health-care professional who is certifying the time of death. In that case, all the three (physiologic, legal and estimated) times of death will be identical/same. This would have happened in this instance if the patient was alive when he reached GCS Medical Hospital or if he had died at Apollo Hospital.

Since here Ms. Patel was brought dead to GCS Medical Hospital, the doctors here had the task of documenting 2 times of death – the legal time of death recorded in the brought dead certificate (time when the doctor examined the person and certified as brought dead) and the more difficult task of estimating the time when the vital functions actually ceased.

We feel compelled to remind the readers that the estimated time of death can vary greatly from the legal time of death and the physiologic time of death – sometimes by days, weeks, and even months.[11] Determining the time of death is both an art and a science. It is dependent on changes that happen to the body after death – which vary widely with an unpredictable time frame. Common test and observations are mentioned in Table 1.

Of these, the ones that would be applicable in this instance are body temperature, rigor mortis, and lividity.

Normal body temperature is 98.6°F. The rule of thumb used is hours since death = 98.6 – corpse core temperature/1.5. Unfortunately, it's not quite that straight forward. The 1.5 degree per hour factor varies, depending on the temperature at the time of death, temperature of room/ambulance, size of the corpse, nature of clothing, and several other factors. It also requires core temperature of the body to be documented by either taking the rectal temperature or, more accurately, liver temperature (by

Table 1: Common items used by doctors to estimate time of death	
1	Body temperature
2	Rigor mortis
3	Livor mortis (lividity)
4	Degree of putrefaction
5	Stomach contents
6	Corneal cloudiness
7	Vitreous potassium level
8	Insect activity
9	Scene markers

making a small incision in the upper right abdomen and passing the thermometer into the tissue of the liver).

Rigor Mortis is also commonly used to estimate time of death. It occurs in the body during the first 36-48 h.[12] It is a natural process, which follows death due to contraction and then relaxation of body muscles resulting from changes in the body's electrolytes and loss of adenosine triphosphate. The process normally begins approximately 2 h after death and can last for up to 48 h. Unfortunately, this is also affected by several factors including the physical activity undertaken by the person before death, the ambient temperature and humidity in which the body was kept after death as well as the physical handling of the body in the intervening period. Vigorous activities or stress immediately before the death can hasten the process of Rigor Mortis. Rough handling of the dead body can "break" Rigor Mortis. However, use of drugs (like muscle relaxants and anesthetics) can affect it in varying ways.

Lividity is the discoloration seen due to the blood in the body being moved by gravity – and begins after the heart has stopped pumping.[13] It results in dark purple or similar discoloration on the parts of the body that are closest to the ground or lower surface. It can become visible within 30 min and lasts up to 12 h. Interestingly, moving the body within the first 6 h of death will alter the lividity.

The question, therefore, is how could anyone have estimated that the death occurred 6-7 h before Ms. Patel was brought dead to GCS Medical Hospital – without taking into consideration the variables mentioned above? Some of the confounding factors are obvious – ambient temperature in the Intensive Care Unit at Apollo Hospital, use of drugs (muscle relaxants and anesthetics) while on ventilator support, manner, and handling during transport of the patient in the ambulance and the manner by which core body temperature was recorded. Other potential confounding factors also need to be ascertained.[14]

Why then was this unsubstantiated allegation being made by the complainant? We feel that portrayals by the press, social media, and movies play a significant role in creating such suspicion and doubt. For instance, in the movie Gabbar (is back), the popular star Akshay Kumar is shown as unmasking a dead body being "treated" at a hospital for financial gain.[15] The perception that health-care professionals and establishments use unfair means to "rip off" patients are also propagated by misleading/sensational reporting by media as well as allegations made by NGOs and individuals that tout themselves as champions of the common man. A classic example is Aamir Khan on the TV show "Satyamev Jayate" talking about kidney transplantation on May 27, 2012.[16] During the interview Mr. Pankaj Rai (husband of the deceased) made the allegation that consent was not obtained. When his complaint was filed, the Hon'ble High Court of Karnataka came to the conclusion that valid informed consent was indeed obtained and documented correctly and dismissed his allegation as false and baseless.[16,17]

Coming back to our case, what transpired between the discharges from Apollo Hospital until they reached GCS Medical Hospital is unclear. The lesson for the health-care professional and the concerned hospital is that documentation of exact time of discharge and status of the patient at discharge is critical (steps in declaring a patient as dead while on ventilator support shall be discussed in a future article). Furthermore, when faced with unreasonable demands from relatives or when relatives are not satisfied, it is best to inform the police.

Could there be an ulterior motive of complainant? Past experience has shown that publicity, getting away from paying hospital bills and greed of financial compensation (instigated by someone who promises financial gain by exploiting the situation) are common reasons. Irrespective of the reason, false allegations lead to lengthy litigation, harassment of concerned health-care professionals and preventing the doctors from doing their job. It might also lead to increasing use of defensive medicine by doctors and hospitals, which would ultimately increase the financial burden on future patients. All stake holders should, therefore, be conscious of the fact that making or encouraging allegations based on conjecture and twisting facts create a situation that is a big disservice to society.

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