



Unique Journal of Medical and Dental Sciences

Available online: www.ujconline.net

Review Article

LAWSUIT AND DENTAL PROFESSION

Nageshwar Iyer¹, Amit Bali², Sunny Singh Ahluwalia^{3*}, Simranpreet Kaur⁴

¹Professor & Head, Department of Oral & Maxillofacial Surgery, M. M. College of Dental Sciences & Research, Mullana, Ambala, India

²Associate Professor, Department of Oral & Maxillofacial Surgery, M. M. College of Dental Sciences & Research, Mullana, Ambala, India

³Post graduate student, Department of Oral & Maxillofacial Surgery, M. M. College of Dental Sciences & Research, Mullana, Ambala, India

⁴Assistant Professor, Department of Oral Medicine and Radiology, Shaheed Kartar Singh Sarabha Dental College & Hospital, Sarabha, Ludhiana, India

Received: 07-08-2013; Revised: 06-09-2013; Accepted: 02-10-2013

*Corresponding Author: **Dr. Sunny Singh Ahluwalia**,

Post graduate student, Department of Oral and Maxillofacial Surgery, M.M. College of Dental Sciences and Research, Mullana, Ambala, Haryana (India) Pin 133203
Phone No. +91 9812031495 (Mobile)E Mail: drsunnyahluwalia@gmail.com

ABSTRACT

In the good old days doctors were viewed upon as demi-gods. Whatever was given, prescribed, ordered or done by the doctor was accepted without any doubt or suspicion. If any complication or undesirable side effect resulted, it was accepted by all concerned. Now the circumstances have changed altogether. People have become conscious of their rights including right to know the nature of illness and details of the treatment. Because of sustained campaign in media and also due to malpractice by some doctors, faith is being replaced by suspicion. Doctor-patient relationship is no longer healthy.

There is an increasing trend of medical litigation by unsatisfied patients. The Supreme Court has laid down guidelines for the criminal prosecution of a doctor. This has decreased the unnecessary harassment of the doctors. A doctor owes a certain duties towards his patient and a breach of any of these duties gives a cause of action of negligence against the doctor. It is important to know what constitutes medical negligence.

In the era of globalization, information is now universally accessible to health care practitioners and to the general public. Global communication with colleagues is instantly available through a click of the mouse. This universal accessibility to information has raised a number of legal concerns. Attention to detail, good communication and excellent documentation can help reduce a teledentistry practitioner's medium-associated liability. This paper reviews thereasons as to why a dentist should be aware of his/her rights, duties and how the medico-legal claims can be avoided.

Keywords: Teledentistry, dental negligence, informed consent, doctor- patient relationship, medico-legal issue

INTRODUCTION

The medical profession is considered as a noble profession because it helps in preserving life. We believe life is God given. Thus, a doctor figures in scheme of God as he stands out to carry his command. A patient generally approaches a doctor/hospital based upon his/its reputation. Expectations of the doctor are two-fold: doctors and hospitals are expected to provide treatment with all the knowledge and skill at their command. Secondly they will not do anything to harm the patient in any manner either because of their negligence, carelessness, or reckless attitude of their staff¹.

The relationship between doctor and patient is based on trust and confidence. Lucky doctors of the past were treated like God and people revered and respected them. Today, we witness a fast pace of commercialization and globalization on all spheres of life and the medical profession is no exception to these phenomenon².

People have become conscious of their rights including right to know nature of illness and details of treatment. Because of sustained campaign in media and also because of malpractice by some doctors, faith is being replaced by suspicion. Doctor-patient relationship is no longer healthier³.

Clinicians, educators, researchers, and policy advocates generally agree that a more active and autonomous role for patients in the doctor-patient relationship is necessary to address health care needs. Proponents of the patient centred approach to health care delivery—in which patients' desires and expectations are incorporated into the medical decision-making process so that both physicians and patients contribute to the decision-making process—suggest that eliciting and incorporating the patient perspective is associated with more favourable outcomes for patients. Some studies have shown that patients who are more active in the medical decision-making process report higher levels of satisfaction, adherence to treatment regimens, and medical outcomes⁴.

It is, therefore necessary for the health care provider to explain to the patient and obtain consent from patient/ parents / guardians before undertaking any diagnostic or therapeutic procedure³.

Informed Consent

Consent is defined as when two or more persons agree upon the same thing in same sense they are said to be consent as per Definition of consent as given in Section 13 of Indian Contract Act, 1872³.

It should be taken in a language that a patient understands. It is beneficial for the doctor to take a signed consent as it gives substantial protection to the doctor and can avoid unwanted allegations, suspicion and/or litigations³.

These days with the commercialization, the patient doctor relationship has not retained the age old sanctity that is a matter of great concern to the medical profession. Healthcare professionals were greatly agitated when it was held that the services rendered by the fraternity are covered under the Consumer Protection Act.

Law of medical negligence has recently undergone radical changes. Earlier, the remedy for medical negligence was available only under the law of Tort. The law of Tort dealt with civil wrong and therefore, it was difficult for the patients and their relatives to get a speedy redressal in cases of medical negligence. Now, it is possible to get speedy redressal under Consumer Protection Act for such negligence⁵.

Consumer Protection Act

The Consumer Protection Act, 1986 that came into force on 15th April 1987 is a welfare legislation mainly titling towards the consumer. The ones who were liable included doctors with independent practice rendering only free services, private hospitals charging all, all hospitals having free as well as paying patients (liable to both), doctors/ hospitals paid by an insurance firm for treatment of client or an employer for treatment of employee. The following group is not liable and included doctors in hospitals, who do not charge their patients, hospitals offering free services to all patients⁵.

The COPRA was promulgated to protect the interests of consumers through the establishment of consumer councils. The objectives of this Act are: 1) to promote and protect the rights of consumers; 2) to provide a right to information and to protect the consumer against unfair trade practices; 3) to ensure that consumers' interests will receive due consideration at appropriate forums. These objectives are promoted by the consumer protection councils established at the district, state and national level. Speedy and simple redressal is provided by quasi-judicial bodies, again at district, state and national levels. According to this Act, a consumer of services is a person who 'hires or avails' services for a payment. This also includes the beneficiary of such services other than the person who actually hires the services. Services of any description made available to potential users are included in the Act.

The purpose of the COPRA is to provide less costly and speedy remedy to aggrieved consumers than the alternative, time-consuming and expensive process of civil litigation. The Act specifically invests the redressal forums with the powers vested in the civil court for the summoning of witnesses and their examination under oath, the production of documents and other materials as evidence, etc⁶.

Maintenance of records

The dental record, also referred to as the patient's chart, is the official office document that records all of the treatment done and all patient-related communications that occur in the dental office. The dental record provides for continuity of care for the patient and is critical in the event of a malpractice insurance claim. Most dentists make notes in paper dental records.

Generally, patient records are housed in file folders for protection. These files are labeled with the following information (in the following order):

- Patient's surname;
- Patient's first name;
- Patient's middle name; and
- Patient's degree or seniority (i.e., Senior, II).

The information in the dental record should primarily be clinical in nature. The record includes a patient's registration form with all the basic personal information. The dental team should be very meticulous and thorough in the dental office recordkeeping tasks. All information in the dental record should be clearly written, and the person responsible for entering new information should sign and date the entry. The information should not be ambiguous or contain many abbreviations. In practices with more than one dental practitioner, the identity of the practitioner rendering the treatment should be clearly noted in the record⁷.

The availability of contemporaneous and clear notes is essential in forensic dental identification. If notes are incorrectly dated, it can complicate and even negate a positive identification. It is in such situations where the errors highlighted by Borrmann and others can cause crucial mistakes to be made. When a request for records is received the entire record is useful, including such items as laboratory prescriptions and study models. Many documented cases have used the unique pattern of the palatal rugae recorded on an orthodontic study model to identify young individuals with no dental restorations⁸.

The police may require access to an individual's record for another criminal matter. They may, for example, want to see an appointment book to establish an alibi or time line. In these circumstances a warrant is required if the patient has not agreed to the release, as it can be argued that the release of notes in this instance is not in the patient's best interest. If in doubt always contact your legal adviser⁸.

However, more and more dentists are making use of computerized filling systems to maintain patient dental records. Electronic records have great quality and patient safety benefits, and will likely increase as more dental offices become computerized⁷.

The production, retention, and release of clear and accurate patient records are an essential part of the dentist's professional responsibility. Success in this task will assist the dentist should a medicolegal claim be made and can assist the police and coroners in the correct identification of individuals⁸.

Teledentistry and legal issues

The practice of teledentistry and telemedicine is broadly defined as the use of electronic communication and information technologies to provide or support clinical care at

a distance-is becoming increasingly common due to recent innovations in data communication as well as increased demand for accessible and cost-effective health care⁹.

These innovations in technology encourage interactive consultations among professionals and may facilitate interaction between patients and their doctors. These various technologies have wide ranging purposes-from administrative data transfers, to specialty consultations, to actual diagnostic examinations. Because teledentistry and telemedicine allow doctors to practice across broad geographic areas and across state boundaries, some difficult legal and regulatory concerns are raised⁹.

Teledentistry in consulting can present in two forms: realtime consulting and store-and-forward consulting. In realtime consulting, a video conferencing format is used and the patient, consulting dentist and referring practitioner are all present in real time. In store-and-forward consulting, the referring dentist collects applicable data and sends them to the consulting doctor via an electronic medium. The consultant reviews the material and returns an opinion via the same route. The patient is not present during the "consultation." Either way, the potential for the patient to access specialized knowledge, care or both is increased via teledentistry. On the other hand, the potential for error could also be increased, as well as the potential for practitioners to incur additional liability. In either case, two or more practitioners are involved in the consultation. We do not recommend that teledental advice be given directly to a patient (for example, via electronic mail or a newsgroup).

Just as it is ill-advised to make a diagnosis based only on a telephone conversation with a patient, it is equally inadvisable to make a diagnosis, treatment recommendation or both without an examination by a licensed practitioner¹⁰.

Teledentistry and telemedicine raise concerns about liability⁹.

There is no case law to clarify the role of the teledoctor and his or her potential liability when acting in that capacity. For instance, what standard of care will courts apply in malpractice claims against doctors "telepracticing" in multiple states? Does a remote telemedical consultation create a legally binding relationship with all of the privileges and obligations that normally exist between doctor and patient? Would a doctor engaging in telemedicine consultations be covered by malpractice insurance if the remote encounter crossed state lines? Telemedicine and teledentistry also raise concerns about the confidentiality of medical and dental information. These concerns arise from the transfer of medical histories and records as well as from general security issues of electronic information stored in computers. Concerns also may arise about the proper method of informing patients of the potential transmission of their data⁹.

What are some of the risks?

Even simply sending an e-mail message to a colleague could be considered a teledentistry referral and may come under legal scrutiny. It is each practitioner's responsibility to understand the implications of the use of information technologies and their associated legal ramifications for the dental practice. Each practitioner should seek the advice of a qualified attorney who is familiar with tele-dentistry and its implications. There are a number of issues that arise with the

use of telemedicine and teledentistry. First, there are legal issues associated with the communication and transfer of information on the Internet. These include licensure, malpractice and jurisdiction. Additional items of concern are technological and ethical⁷.

Attention to detail, good communication and excellent documentation can help reduce a teledentistry practitioner's medium-associated liability. With regard to record keeping, it should be noted that e-mail sent to the practitioner by the patient in reference to his or her condition or treatment must be kept by the practitioner as part of the patient's medical record, and that the content of such e-mails can be made a part of the discovery process in a potential legal proceeding. Before attempting to practice teledentistry, the potential provider should clarify and document the parties responsible for installation, maintenance, access, security and privacy efforts associated with the equipment used. Transmission verification procedures should be developed and documented at both the local and remote sites. Documented contingency plans should be developed, including a description of the backup protocols used. Furthermore, clinical guidelines should be established and documented that are at least equal to the accepted standards of care in the dental community¹⁰.

Both the local and consulting doctors should separately and thoroughly document the patient's medical and dental histories, examination results, diagnoses, differential diagnoses, treatments, consultations and recommendations. It would also be wise for all practitioners involved to carry insurance specifically designed to provide coverage in the event of a teledentistry failure, including malfunction of any equipment or software¹⁰.

Finally, patients should sign a teledentistry consultation consent form specifically detailing the issues associated with their care. Each provider must remain aware of all of the issues applicable to the use of teledentistry. It makes sense for each practitioner to clearly define what the relationship is between the patient in question and the consultant. A signed written informed-consent form could help clarify other secondary issues, such as abandonment, establishment of the standard of care, jurisdiction and negligence¹⁰.

To-do list for the dentist to avoid litigation

1. Avail the services of a good lawyer
2. Timely filling of the written statement, affidavit, and all documents as required.
3. Proper maintenance of the case history, clinical records, affidavits of all treating doctors, X-rays, laboratory test results, etc. which will be of immense help in supporting doctor's claim
4. Special attention has to be given to bring in the expert evidence of a qualified and independent professional. It is advisable to file an affidavit of the expert as well.
5. Corroborative medical literature on the subject should be submitted.
6. Relevant case law on subject will also be helpful¹¹

CONCLUSION

Nowadays, people are very aware of their rights and laws involving any wrong done to them. Sometimes people misuse

these rights to sue the dentist for wrong reasons also and for no mistake of the dentist. Once a dentist gets involved in litigation, it will eventually affect the reputation no matter if the dentist wins the case. However, genuine cases of medical negligence should be avoided with correct diagnosis and treatment planning and good communication. Further, this can be prevented by taking written informed consent prior to the treatment, maintenance of all records of the patients and general awareness of the dentist. This will prevent medico-legal trouble for the dentist.

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Source of support: Nil, Conflict of interest: None Declared