

Original Research Paper

Study of Medical Professional Liabilities in Bellary Region of Karnataka

¹Nagesh Kuppast, ²Dileep Kumar R, ³Sindhu Rajashekar, ⁴Shradha Iddalgave, ⁵Siddaramanna T C

Abstract

The study of Medical Professional Liabilities was carried out in Bellary region of Karnataka state. Details of the cases were collected from the district consumer forum Bellary between January 2000-December 2009 (10 years). In each case, complaint of the complainant and response to a complaint by the opponent was studied and analyzed. Date of filing and date of judgment was noted in each case. In our study out of ten cases, general practitioners were more prone for professional liabilities. Six cases were compensated monetarily. In our study the most common cause for litigation was found to be breach of practice guidelines, which can be prevented by attending continuous medical education (CME) programs and workshops, followed by misguided allegation which can be prevented by proper communication to the patient at first consultation. The lawsuits not only have heavy emotional toll on doctors and patients but on the society as a whole. Medical professionals should opt for medical indemnity insurance, which defends his or her case in all aspects and may even pay compensation on his behalf in case of professional liabilities.

Key Words: Professional liability; Medical negligence; District consumer forum

Introduction:

Professional liability is defined as legal obligations arising out of a professional's errors, negligent acts, or omissions during the course of the practice of his or her professional practice.

Medical negligence is absence of reasonable care and skill, or willful negligence of medical practitioner in the treatment of patient which causes bodily injury or death of the patient. Negligence is an integral part of human nature and doctors are no exception to this.

Consumer Protection Act (CPA) 1986 was enacted by parliament to provide for better protection of the interest of consumers in the background of guidelines contained in the consumer protection resolution passed by U.N. General Assembly on 9th April 1985.

Corresponding Author:

²Assistant Professor,
Department of Forensic Medicine & Toxicology,
Sri Siddhartha Medical College, Tumkur, Karnataka
E-mail: drdileep@gmail.com

¹Assist. Prof, Dept. of FMT,
Karuna Medical College, Palakkad, Kerala

³MBBS 3rd year student, SSIMS&RC, Davangere,

⁴Assist. Prof, Dept. of Anatomy,
Karuna Medical College, Palakkad, Kerala

⁵Assist. Prof, Dept. of FMT, Sri Siddhartha Medical
College, Tumkur, Karnataka

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Medical profession was not included in this act at the beginning. However, due to the landmark judgment of Supreme Court in Nov 1995 (IMA v/s V.P. Shantha) the medical practice, barring some minor exception came within the ambit of CPA. [1] In medical practice, professional liability arises when there is medical negligence of civil nature, the patient claims compensation for the damages suffered by him in terms of money.

This compensation can be sought by a lawsuit either in a civil court or in a consumer redressal forum / commission in India.

Defendant physicians may experience wide range of distressing emotions and increased stress, which can disrupt their personal lives, lives of their family, their relationship with patients and their medical practice. Medical professional liability cases usually take several years to get resolve and this stressful period can be seemed as interminable.

According to ACOG (American College of Obs. & Gynae.) 1999 survey on professional liability conducted by Princeton Survey Research Association, 76.5% of its members had at least one professional liability claim, filed against them during their career. [2]

Material and Methods:

Cases which were filed and judgement given in the District consumer forum, Bellary between January 2000-December 2009 (i.e. 10

years) were included in the study. Details of the cases were collected from the district consumer forum Bellary. In each case, complaint of the complainant and response to the complaint by the opponent was studied and analyzed.

Date of filing and date of judgment was noted in each case. If needed complainant and opponent were consulted personally for details about the case. Details about the professional liability claims for various specialties were received from the Oriental Insurance Company [3] and New India Insurance Company Limited. [4] In each case following points are noted, such as

1. Misguided allegations
2. Communication failure
3. Documentation defects
4. Practice guidelines
5. Consultations and
6. Administrative incompetence.

Case Reports:

We studied 10 cases which were filed under medical negligence in Bellary district forum (Consumer court) from January 2000 to December 2009 (10 years), out of which general practitioners were more prone to professional liability (PL). This is followed by Pathologists, Pediatrician, Orthopedician, Physician, Urosurgeon and ophthalmologist.

Out of the total ten cases, 4 cases were dismissed and 6 cases were compensated monetarily. According to Bellary branch of Oriental Insurance Company, United Insurance Company, National Insurance Company and Indian Insurance Company, Bellary PL claims vary with the type of specialization.

We studied 10 cases, which were ordered (judgement given). Out of 10 cases general practitioners were more prone to PL (Four cases - 40%) followed by diagnostic labs i.e. pathologists (Three cases-30%), Paediatrics (One case-10%), Urosurgery (One case - 10%), Orthopaedics (one case - 10%), Ophthalmology (one case - 10%).

Out of 10 cases, six were compensated monetarily. Among these cases, major causes for PL claims, failure of communication (30%), breach of practice guidelines (30%), consultation factor (20%), misguided allegations (10%), and administrative incompetence (10%).

According to our study, professional negligence has caused mental agony and unnecessary sufferings and loss to the patients (public). Here we have mentioned six ordered cases:

Case One:

With false diagnosis report, HIV negative patient was declared as HIV positive; which lead to the damage of patient's reputation in the society, mental agony to the patient and his family members and finally death of patient occurred.

Case Two:

Due to negligence in taking reference from concerned specialist (here gynaecologist) has led to severe organ damage (perforation of bladder) in the patient who had a history of caesarean section and appendectomy during surgery of fibroid uterus.

Case Three:

Prolonged use of medications for temporary symptoms without diagnosing the root cause of the disease and not referring the patient or suggesting him to consult specialists has left the cancer undiagnosed till the end stage.

Case Four:

Simply guaranteeing patients for the 100% solution for infertility, which lead to mental depression, loss of trustfulness towards doctors?

Case Five:

Failure in giving the immediate lifesaving treatment to the patient. Here a severely dehydrated child passing loose stools and with severe vomiting was referred to diagnostic centre instead of starting intravenous fluid. By the time the diagnostic report has arrived the child was dead.

Case Six:

Negligence to consult radiologist has led to development of complication in tubal ectopic pregnancy.

Discussion:

Professional negligence is defined as absence of reasonable care and skill, or willful negligence of medical practitioner in the treatment of a patient, which causes bodily injury or death of patient. [5] Negligence is of two types; one is civil negligence and second is criminal negligence. Civil negligence comes under the purview of consumer forum, whereas criminal negligence is trialed in criminal court.

Liability for negligence arises if the following conditions are satisfied:

1. Duty; existence of duty of care by doctor,
2. Dereliction; the failure on the part of doctor to maintain applicable standard of care and skill,
3. Direct causation; the failure to excise a duty of care must lead to damage,

4. Damage; damage should be of a type that would have been foreseen by a reasonable physician. [5]

Out of ten cases studied, six were compensated monetarily. Among them, major causes for PL claims are breach of practice guidelines (30%), failure of communication (30%), consultation factor (20%), misguided allegations (10%), and administrative incompetence (10%).

In 10 years only few cases were filed, this is because of ignorance of the people about the consumer protection act in India and many cases were solved outside the court, when there is clear negligence by doctor (these cases were not filed in court).

The study by Ward CJ [6] showed that 25% of the total lawsuits were indefensible due to the reason such as

- a) Breach of standard (17%).
- b) Lack of documentation (3%).
- c) Combination of both (5%).

Lynch [7] and others in their analyses described that 46% claims were mere misguided allegation, while 19% of cases were due to incompetent care, in 12% there was error of judgments, and 7 % of cases resulted due to failure of communication.

According to The New India Insurance Company Ltd, maximum annual premium was paid by the General Surgery, followed by Urosurgery, Obstetrics and Gynecology, Orthopedics, Ophthalmology, and Pathology.

If we look into annual premium in US [8] (1998-1999), maximum annual premium was paid by Obstetrics and Gynecology (35,200(\$)), followed by orthopedic (27,300(\$)), General Surgery (19,700(\$)), Pediatrics (12,300(\$)), General medicine (9,400(\$)), and Psychiatry (5,500(\$)).

Conclusion:

The major causes observed under different cases of Professional Liability Claims can be enumerated as.

1. Practice guidelines
2. Communication failure
3. Consultation.
4. Misguided allegations
5. Administrative incompetence

Among these the commonest cause in our present study was breach of practice guidelines, which can be prevented by attending continuous medical education (CME) programs and workshops. Misguided allegation can be prevented by proper communication to patient and their attenders at first consultation. So it is important to spend more time at first consultation. The lawsuits not only have heavy emotional toll on doctors and patients but on the society as a whole.

According to New Indian Insurance Company, total annual premium and total sum assured is almost doubled from the year 2001-02 to 2007-08. Escalating liability premiums and awards drive up the cost of medical care.

This can result in limited access to good medical care and when the care is available, it is more expensive. Thus, efforts must be made to avoid such a situation by taking preventive steps. It is important to have comprehensive approach in order to minimize professional liability claims. By taking care of patient clinically / legally and administratively, we can minimize the professional liability claims to large extent.

Medical professional should opt for Medical Indemnity Insurance scheme, which defends his case in all respect and may even pay the compensation on his behalf in case of professional liabilities.

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