

Medical Negligence/ Malpractice/ Malpraxis

Definition

- It is the failure to execute
- Reasonable degree of skill and care
- Or wilful negligence of a medical practitioner
- Which causes some harm or bodily injury or death of the patient

Acts contributing to negligence

1. Act of commission

Doing something a reasonable man would not do



2. Act of Omission

Not doing something that a reasonable man would do under a circumstance



Ingredients of medical negligence

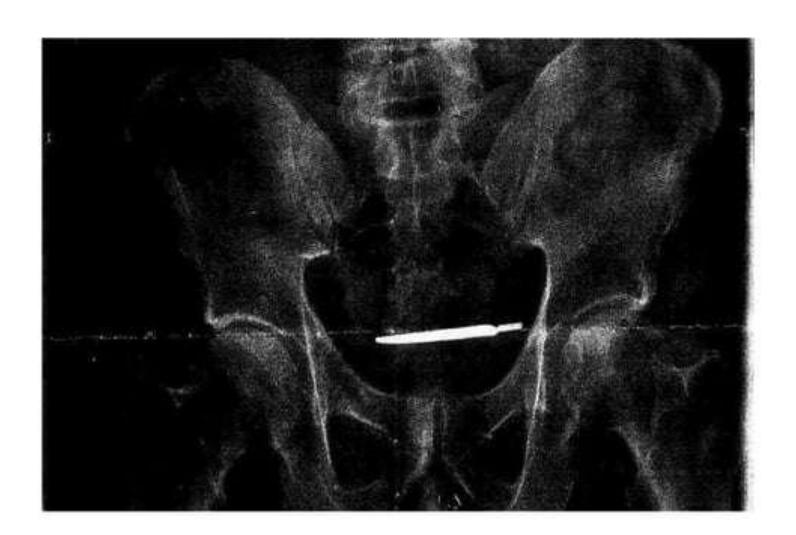
- 4 D's
- 1. Duty of care
- 2. Dereliction of duty of care
- 3. Direct causation
- 4. Damage

Note →

- Burden of proving the negligence > patient
- Burden of proving innocence → doctor

Doctrine of Res Ipsa Loquitur

- 'thing speaks for itself'
- Here, the patient need not prove the negligence
- Doctor will be held liable
- This is applied according to "doctrine of common knowledge"
- Can be applied to both civil and criminal suits



Examples:

- Operation on a wrong patient on a wrong part
- Loss of hand due to prolonged splinting
- Forgotten instruments
- Mismatch transfusion

Novus actus Intervenens



- 'unrelated act intervening'
- There is always a logical sequence of events
- If such a continuity is broken by an entirely new and unexpected happening
- Due to negligence
- Ex:

Accident → laparotomy → forgotten instrument

Doctor will be held liable

In some situations it can be a defence plea

- 1st doctor prescribed some medication →
- Meanwhile he visits some other doctor > he prescribes another wrong drug >
- Patient dies due to the second drug
- 1st doctor wont be held liable



Civil and Criminal Negligence

- Civil negligence > not defined in IPC
- pay damages
- Criminal negligence > Section 304A IPC
 2years imp +/- fine

CIVIL Negligence	CRIMINAL Negligence
No specific violation	Clear violation of law
Simple absence of skill and care	Gross absence of skill and care
Consent – good defence	Consent-Not a defence
Civil court trial	Criminal court trial
Strong evidence is sufficient	Guilt should be proven
Pay damages	2 years imprisonment
Complainant- sufferer	Complainant- public prosecutor (state)
Burden of proof- patient	Doctor has to prove innocence

Professional Misconduct
Violation of medical ethics
Need not be present
Need not be present
State medical council
Erasure
Appeal- to the central government

Defences against medical negligence

1. Calculated risk doctrine

- -an element of risk is there in all surgeries
- -injury may occur even though reasonable skill and care has been taken

eg: patient dies during cardiac surgery (5-10%)



2. Contributory negligence

- Any unreasonable conduct from the part of the patient
- Which is combined with doctor's negligence
- Causing injury

Eg: He doesn't give a history of drug allergy

Usually it's a partial defence

 Court says that it is the duty of the doctor to see whether the patient is following his instructions

Ex: Follow up



Limitations to contributory negligence

- (a) Last clear chance doctrine
- When doctor was given a last chance to correct the negligence patient caused

But he fails

It is not a defence plea



(b) Doctrine of avoidable consequences rule

Ex: If doctor knows that the patient is neglected

Recurrent follow up could have avoided these

consequences



3. VICARIOUS LIABLITY

Respondent superior



Captain of the ship doctrine

Liability for act of another

Responsibility lies on the superior for the act of the subordinate

3 ingredients

- 1. An employee- employer relationship must be there
- 2. The conduct should be within the scope of his employment
- 3. The negligence occurred while on the job



4. Corporate Negligence

- Failure of administrators of the hospital to provide adequate facilities
- Not providing standard equipment and competent employees

Hospital is liable of the damages



5. Products liability

 Damage due to faulty, defective or negligently designed equipment

Bad drug

Manufacturing company is liable

6. Medical Maloccurence

- Inevitable accidents may happen even if adequate precautions care and skill are applied
- Always a factor of risk

So doctor cannot be blamed

Ex: Amniotic fluid embolism following Cesarean section

7. Therapeutic Misadventure

- Somewhat similar to medical maloccurence
- Its more related to drugs
- Diagnostic procedures using dyes
- Its related to the treatment given

8. Error in judgement

- Purely accidental
- Compared with a doctor of similar competence
- · Cant be held liable

9. Res Indicata

 Case against the doctor should be filed within 2 years of alleged negligence

10. Res Judicata

- 'the things have been decided'
- Once a case is completed between two parties it cannot be tried again.

11. Composite negligence

- Damage has occurred due to the negligence of two or more persons
- → Not from the part of the patient

Note:--

 Informed consent is not a defence in negligence cases

Thank you