

Medico-legal Aspects in Dentistry

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Abstract

Dentists as healthcare professionals have a duty and standard for patient care. Any violation in the duty and practice makes dentists liable to negligence & legal actions. Law protects the dentists as well as ensures ethical practice. With the steady increase in the number of dental graduates and decrease number of job facilities, the dental profession seems to descend of its ethical standards. So a thorough knowledge about the medico-legal aspects is mandatory for smooth execution & delivery of productive services. In this paper we review comprehensively different aspects of avoiding negligence.

Keywords: Negligence, Medico-Legal, Ethics.

Introduction

Law regarding health care workers has been accepted in many advanced nations but is still in its early stages amongst a few. With advancement there is an increase in the awareness of the rights of the patients, so it should be mandatory for dentists to know the law and prevent from being a victim of unfair legal proceedings.¹ It is fair on dentist's part to follow ethical practice and obtain patients consent before any dental procedures or any research including human.²

But dentistry has degenerated with its ethics as the number of graduates has been increasing with lesser job perspectives and budding dental clinics in India making it more of a business set up. There has been no record keeping, no consent and negligence amongst a lot of practitioners as we are ignorant about the medico-legal concerns.³

Ethics: Ethics technically deals with the professional code of conduct. These rules every dental student should learn before graduating. They affect every resolution made at the dental office that could be the association with the patient, staff or other professionals. It's the fundamental objective to furnish excellent services to the patients. It also prevails around the human values, responsibility, culture, ideology and morality.⁴

The most common ethical issues that have been reported are deficient sterilization and waste disposal in dental clinics, poor knowledge and inadequate orientation of ethics with incompetence for dental procedures, expensive treatment, lack of consent, lack of harmony about procedures among fellow dentists, Conflict in Advertising, clustering of dental clinics in a particular area, the difference of opinion about the treatments among dentist as well as a patient along with improper record keeping all of it stands to unethical practice.⁵

Principles of ethics:

Patient autonomy: Dentists at all times should regard the self-resolution & privacy of the patient. They are righteous to take decisions for their treatment. Therefore to keep the respect of patients decision a informed consent is mandatory. The Dentist should explain the treatment options its pros and cons along with

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other treatment facilities available thereby respecting the final decision of the patient.⁶

Non-maleficence: It states to not harm the patient. Dentists should reconsider procedures which solves one issue and begin a new one, in such condition the dentist should evaluate the treatment by keeping in mind the advantages and disadvantage of the procedure. At any point in a procedure if a dentist feels a lack of skill he shouldn't hesitate to call a specialist.⁷

Beneficence: It directs to aid in doing good. It should be inculcated in daily practice to provide benefits to the patient. Like timely adequate functioning of the patient with good esthetic treatment as the patient desires.⁸

Justice: It states equity. It is the moral responsibility to be legitimate in all the dealings with patients, staff & society. There should not be any type of racial, gender, caste, creed discrimination.⁹

Veracity: It is the truthfulness and respect of the self-esteem of the relationship with the patient. This involves trust in maintaining the intellectual, billing, advertising integrity of the patient.¹⁰

Confidentiality: It is the right of the patient to expect that all communications and case records related are confidential. And the dentist must respect it.¹¹

This also includes professional conduct and etiquette which should not include any kind of commercialism. With the difficulties dentists face these days one should succumb to gifts, Continuing Dental Education programs, trips, etc. Even not provide substandard treatment to patients, refer cases to specialists and not fear of loss of patients.^{12,13}

Consent: Consent is for safeguarding the rights of the patient as well as the dentists. It helps in better exercise of patient's autonomy. It also demands a mature decision by the provider and safeguarding his interests. Audiovisual aids could be used to teach patients about treatment procedures thus enhancing informed consent.¹⁴ These provide a considerable proof and documentation although its been categorized under the following:

- **Competence:** It states that the patient suffices with the ability to understand the treatment completely also with its limitations though this depends upon several factors like age, educational qualification, intelligence, cognitive function, locus of control and anxiety levels.¹⁵

- **Voluntariness:** In this the patients agree to the treatment without and compulsion
- **Information and knowledge:** It means that sufficient comprehensible information is disclosed to the patient regarding the nature and consequences of the proposed and alternative treatments.^{16,17}

Types of Consent:

1. **Implied Consent:** Refers to when a patient is unassertive about the consent. This doesn't need to be documented but is understood by an excellent communication where the dentist provides the details of procedures.¹⁷
2. **Verbal Consent:** here verbally the patients agree to certain routine diagnostic procedures following a well-documented record of the procedure.¹⁸
3. **Written Consent:** This is mandatory for procedures that involve risk to life like sedation, administration of anesthetics, restorative & endodontic procedures along with the surgical procedures & administration of medications.¹⁹
4. **Implied Consent:** The patient comes to the dentist suggests that he is willing to undergo the procedures.
5. **Expressed Consent** or tacit consent is a strategic consent which is written in the most pleasant languages.
6. **Informed Consent:** It is expressed in the patient's language about the diagnosis, treatment, advantages, limitations, etc.
7. **Proxy Consent:** When consent is given by parent, guardian or close relative
8. **Blanket Consent:** It's a printed consent that involves anything and everything a dentist or the hospital can do to a patient.¹⁸

Informed consent should be such that should specify the treatment plan, the outcomes along with the benefits and limitations, any possible risk of the materials used, the treatment alternatives along with the cost of the procedures & consequences of treatment. This should be immediately computed with the patients & dentists signature and date. Special care should be taken to have a readable signature and name.¹⁷

Consent can be not considered in cases of emergencies, compulsory drug screenings, procedures related to mental disorders & when the court of law has directed for any treatment. In the case of minors

the consent is obtained from the parents or if any legal guardian as they are not mature enough to decide their well-being. If the adult accompanying the child is not a legal guardian they are not allowed by the court of law to decide such cases a telephonic consent may be obtained.¹⁸

Negligence: Negligence is the lack of proper care and attention or guilty of carelessness. It is in general violation of duty by the exclusion of something that a judicious person wouldn't do. The Supreme Court also has put forward the four components of negligence which are as follows:

Duty: Is the trust that is placed in the dentist and patient relationship. The dentist owes a duty for his patient the moment he agrees to treat. This doesn't happen when the dentist doesn't agree to treat in case of any emergencies or so.¹⁴

Dereliction of duty: Occurs when the dentist is negligent while performing the procedure. It consists of a series of procedure that produces an injury and without which the injury would not have occurred.¹⁵

Damage: The damage caused due to dereliction and is judicious. In such cases the patient can sue the dentist for remuneration.

Direct Causation: Damage must result directly from the carelessness and not from the other reason.¹⁸

Types of Negligence:

1. Doctors negligence:

(a) **Civil negligence:** This happens when the patient demands money as compensatory damage. Here both the dentist for a fee as well as the patient can file a case. These cases are dealt with in the civil court or consumer courts. As per the court directive as punishment the dentists have to pay the compensation without any criminal proceedings. Sometimes even the dental council is involved for temporary or permanent removal of name from practice. But in either case, the patient has to prove negligence against the dentist.¹⁹

(b) **Criminal negligence:** This happens when a case is registered against the dentist for negligence. If guilty dentists are prosecuted under various sections of Law.

Table 1

Section 304A (IPC)-	Negligent homicide. Act that could lead to the death of the patient. Penalty- imprisonment of 2 years, or fine (any amount) or both.
Sec 336 (IPC)-	Jeopardizing the life of the patient even in the absence of injury Ex. an in case of medical histories like heart disorders where the patient is at risk without a prophylactic antibiotic or discontinuing use of Aspirin. Penalty- imprisonment of 3 months, or Rs 250 fine or both.
Sec 337 (IPC)-	Simple Injury during dental procedure like pain and swelling post-extraction Penalty - imprisonment of 6 months, or Rs 500 fine or both
Sec 338 (IPC)-	Serious Injury during procedure like fracture of jaw during extraction Penalty Prison for 2 yrs or Rs 1000 fine or both

2. Patient negligence: Here the patient is negligent. The patient is not responsible enough to give a proper history which in due course of proving fatal. The patient is not taking medications or following instructions properly in such cases dentists have to prove the negligence of the patient.²⁰

3. Contributory negligence: Here both the dentist and the patient are negligent but the burden is on the dentist. It is usually dealt with in the civil courts and doesn't contribute to any criminal charges.²¹

4. Composite negligence: Here the injury is caused by combined negligence of two or more dentists. The claim can be divided by the dentist or if the patient claims from anyone then they are liable to pay.¹²

5. Corporate negligence: Here the dentist is not responsible but the concerned corporate or the hospital is responsible eg. Use of outdated instruments or medications at a hospital.²²

Conclusion

Dentists are unaware of the laws regulating their profession. In this article we briefly see the importance record-keeping as any of the notes, radiographs, photographs or models & casts are the only available proof while we are defending ourselves in a negligent lawsuit. The legal proceedings are strenuous and upsetting to negotiate so it's always better to prevent. Once a legal lawsuit is filed it not only becomes a financial burden it drains one emotionally and psychologically.

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