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Legal aspects in dentistry

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✓ Introduction

A dentist is a healthcare professional providing care for the patient, as does a physician. Obviously, there is a duty imposed upon the dentist to practice dentistry at the certain standard of care. A breach of this duty that results in injury to the patient is called negligence. Such negligence can result in lawsuit against the dentist. Dental practitioners must be aware of the legal elements, as there are greater possibilities of dentist encountering such cases, particularly in the context of patient empowerment and increased desire for improved personal appearance. This article provides general information to a dentist regarding various dental negligent acts and legal procedures available in India.

Negligence: Failure to use the degree of care considered reasonable under the circumstances, resulting in unintentional injury is negligence. For an act to be considered negligent, the following aspects must be present: ^[1]

1. Dentist owed a certain standard of care
2. Dentist did not maintain that standard
3. There was an injury resulting from the lack of care
4. There should be a connection (proximity) between the negligent act and the resultant injury

Dental negligence can cause the dentist to face litigation, if the service has been paid for. However, the onus is on the patient to prove not only that he is the victim of negligent service but also has suffered damage in the process.

A few dental negligent acts

1. Any doctor can take up an emergency. A patient cannot be refused treatment on the ground that it is a medical legal case and therefore to

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1. Any doctor can take up an emergency. A patient cannot be refused treatment on the ground that it is a medico-legal case and therefore to be seen in a government or approved hospital. Failure to attend an emergency is negligence. ^[1]
2. Prevention of infection should not be restricted to only the health provider. It is the dentist's responsibility to prevent cross infection between patients. Endangering the health or lives of other patients (even without injury) can invite criminal negligence (Sec 336 IPC).
3. All the patients have a right to information about the procedure and possible outcomes. Failure to explain may be considered a negligent act. It may, however, not be necessary in emergency.
4. Another cause of negligence usually involves general dentists' attempt to treat beyond their level of competence and failure to refer cases to the appropriate specialist. ^[2] For example, in periodontal cases when there is any question as to the degree of difficulty or outcome, case should be referred to a periodontist to avoid legal pitfalls. ^[3]
5. Lack of informed consent is a cause of malpractice action, and without it, battery (unlawful touching) can be alleged. ^[1] In practical terms, this means physically or emotionally harming the patient. If there is a procedure, which has complications or undesirable consequences, which a prudent patient does not anticipate, it is necessary to get an informed consent. In the consent
 - There must be understanding of problem, that is, a diagnosis
 - The proposed treatment and any alternative treatments must be fully explained.
 - No warranties or guarantees can be given.
 - Authorization must allow for a change in plan if an unproposed circumstance arises.
 - Discussion of all sequel and side effects of proposed/current treatment plan must be given.
6. Dentist must engage in acceptable practice that is usually the product of evidence based dentistry as opposed to customary practice, which is usually anecdotal. ^[4] For instance, arsenic has been traditionally used to devitalize the pulp in endodontic. However, current endodontic practice unequivocally disapproves the use of arsenic due to potential complication, it may therefore be said that, while the use of arsenic was customary it is not an accepted practice today. A complication produced by arsenic, may therefore be said to be negligence.
7. Failure to give advice clearly results in complication. Dentist must give clear instructions regarding diet and postoperative care.
8. If prescriptions are not clear and if they do not have proper instructions, the dentist is deemed to have been negligent. ^[5]
9. Failure of dentist to advice a crown for root canal filled tooth with significant loss of tooth substance can result in fracture of tooth. Dentist will be held liable. Similarly, making defective dentures is a negligent act. ^[6]
10. Accidental ingestion of crowns, dental instrument, teeth etc. can also be considered as negligence.
11. Patient was given local anesthesia without test dose and developed anaphylaxis and died. Dentist will be held liable.
12. Under Public Liability Insurance Act, a dentist can be held liable for harm caused to the public by inadvertant exposure of harmful substances like mercury, arsenic or for those matter even radiations. ^[5]

Non-negligent acts

1. Not obtaining a consent form in an emergency is not negligent.
2. Patient's dissatisfaction with the progress of treatment cannot be called negligence.
3. Not getting desired relief is not negligence.
4. Charging, what the patient thinks is exorbitant is not negligence.
5. When patient does not follow advice of the doctor and does not get satisfactory results, dentist cannot be held negligent

✓ How is Dentist Liable for Negligence? ↑

Dentists are liable under four heads

1. Tortious liability
2. Contractual liability
3. Criminal liability
4. Statutory liability

1. Tortious liability (Civil liability)

It may be of two types

- a. Primary liability
- b. Vicarious liability
 - a. Primary tortious liability: When a dentist is directly liable for an act of negligence in his clinic or hospital it is called primary liability. Most dental negligence would come under this category. The remedy for breach of tortious liability is unliquidated damages as awarded by the judge; it is usually in the form of compensation by cash.
 - b. Vicarious liability: Dentist who is employed by a hospital or institution is often not primarily responsible for negligence. They may be said to have vicarious liability through the hospital. The hospital has the liability for the negligence of an employee. However, if the patient is admitted by a dentist in his personal capacity, then the dentist will be personally liable.

2. Contractual liability

In a doctor-patient relationship, an implied contract is established when a dentist accepts a patient for treatment. A breach of any aspect of this implied contract, where the dentist is under duty to, treat with care as well as continue to treat and not terminate until patient is cured or patient discontinues treatment, may be considered a contractual liability. However in most instances if there is no written contract, their liability will essentially lie within the realm of tortious liability.

3. Criminal liability

This liability normally lies with an identifiable individual or groups of individuals. However, recent trends indicate that hospitals also may be held vicariously liable just as in civil liabilities. Criminal liability is penal and involves punishment in the form of imprisonment or fine or both. Criminal negligence is considered to be a crime against society and not just the aggrieved party.

The important offences inviting criminal liability with regard to negligence are:

1. Section 304A Indian Penal Code (Sec 304 A IPC) - Negligent homicide. A rash or negligent act resulting in death, e.g. death on the dental chair.
2. Sec 336 (IPC) - An act endangering the life of a person (even if there is no injury), e.g. extracting a tooth for a patient with valvular heart disease without antibiotic prophylaxis against endocarditis (even if he does not develop endocarditis).
3. Sec 337 (IPC) - A rash or negligent act causing simple injury, e.g. pain and swelling after extraction due to negligent extraction.
4. Sec 338 (IPC) - A rash or negligent act resulting in grievous injury, e.g. fracture of jaw during extraction due to excessive or improper force.

A few terminologies ^[5]

Cognizable offence: An offence where a police officer can, based on his investigation, arrest a person without a judicial warrant.

Non-cognizable: An offence, where an arrest can only be made by a judicial warrant.

Bailable: The arresting officer can give a bail. Bail is a matter of right and has to be given unless the officer apprehends that the accused may abscond or tamper with evidence.

Non-bailable: Bail can be secured only from a judge. Heinous and violent crimes fall in this category, e.g. If there is a significant risk that the offender may commit further crime, abscond or tamper with evidence.

Compoundable: A crime in which a compromise between the suspected offender and the victim or his representatives can be worked out is said to be compoundable

Non-compoundable: If the crime is against society and is of a serious nature, no compromise can be made between the accused and the victim. These cases are said to be non-compoundable.

Sec 304A is cognizable, bailable and non-compoundable. It can be punished with imprisonment of either description for a term of two years or fine or both.

Sec 337 and 338 are cognizable, bailable and compoundable. Sec 337 may attract an imprisonment up to three months and a fine up to Rs 250 or both. Sec 338 can involve imprisonment up to two years and a fine up to Rs. 1000 or both.

It is important for the dentist to be aware of these liabilities. It is also important for him to understand his rights. For example, bail is a matter of right in the above situations and it is to be given by the police officer affecting the arrest based on the surety given by a colleague. He can be given surety on his own reputation. The burden of reason for refusing bail rests on the police officer and he will have to give convincing reasons for not granting bail.

4. Statutory liability

A dentist is liable if there is any infringement of statutes. They then become accountable to a statutory body. The liability depends on the kind of infringement and the provisions in the statute to deal with it. There are many statutes dealing with practice of doctors and dentists, as well as hospitals. Dentists may also be liable to other statutory bodies such as Pollution Control Board.

a. Who is liable? ^[7]

- Dentists with independent practice rendering only free services.
- Private hospitals charging all.
- All hospitals having free as well as paying patients; they are liable to both.
- Doctors/hospitals paid by an insurance firm for treatment of a client or an employer for the treatment of an employee.

b. Who is not liable? ^[7]

- Dentists in hospitals which do not charge of their patients.
- Hospitals offering free services to all patients.

What should a dentist do in the event of a medical mishap? ^[7]

When something untoward happens following a diagnostic or therapeutic procedure, or when a patient or relative makes a complaint, the dentist must take appropriate steps, some of which may be:

1. Complete the patient's record and recheck the written notes.
2. Be frank enough and inform clearly of the mishap. Show that you were genuinely concerned about the unfortunate mishap. Answer all the queries of patient / relative and do not mind their repeated questioning, harsh attitude and at times even abusive language. Keep in mind the mental state of the close relatives / friends. Be compassionate, try to remain on the scene as long as possible, try to engage less excited attendants into discussion on the mishap and indirectly try to bring into focus the circumstances under which the mishap occurred. Doctors who are open-minded and communicative are much less likely to be complained against as patients / attendants are extremely forgiving of errors made by a friendly and concerned medical attendant. A high proportion of complaints are precipitated or escalated into legal action by a progressive breakdown of the doctor-patient communication.
3. After these initial responses, the dentist should contact some other doctor / protection organization to seek advice. The Dental Associations can form groups / cells to advise and assist in such situations.

✓ Legal Process

- entertain any complaint from the patient
- take action against dentist in case of negligence
- award compensation

The CPA was passed by the Indian Parliament in the year 1986 to safeguard and to protect the interest of consumers. Prior to the enforcement of this Act, cases against dentist were decided by civil courts and even under Indian Contract Act. [8] But the disadvantage of the latter was high cost and more time consuming.

Advantages of consumer protection act [8]

1. Court fee is less.
2. Speedy justice.
3. Procedural simplicity. Complainants can state their own case without a lawyer.
4. A non-intimidating atmosphere and encouragement to settle case without too much of formalities and lengthy procedures.

✓ Consumer Courts

[6]

1. District Forum (one or more district form for each district). Jurisdiction up to Rs. 20 lakhs.
2. State Commission (one state commission for each state) Jurisdiction above Rs. 20 lakhs and up to Rs. 1 crore. The State Commission also serves as a supervisory agency and has the power to call for the records and pass appropriate orders in any dispute pending or decided by the District Forum.
3. National Commission (one national commission for entire country) Jurisdiction above Rs. 1 crore. The National Commission, similarly, acts as an appeal agency for decisions of the State Commission. Where the National Commission has served as the court of first instance, the Supreme Court of India acts as the court of appeal.

✓ Procedure

Complaint means any allegation in writing by the complainant that he has suffered loss or damage due to deficient services. It can be related to deficiency causing discomfort, loss of activity, loss of money, loss of workdays, quality of life etc.

1. As provided under section 24A of CPA, a complaint has to be filed within two years of date on which cause of action arises.
2. As per section 13 of CPA, first a copy of complaint has to be sent to dentist directing him to give his version with in a period of thirty days, which may be extended up to 45 days. After 45 days, if no reply is provided, then the court orders contempt proceedings against the dentist.
3. During reply, dentist may deny the allegation of the complaint.
 - The machinery is required to decide the cases speedily i.e. within a period of three months. If, after the proceedings, the District Forum is satisfied that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things: [7]
 - To return to the complainant the charges paid.
 - Pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
4. Any person aggrieved by an order made by the District Forum may appeal against such order to the State Commission or National Commission within a period of 30 days from the date of the order. The State Commission may entertain an appeal after 30 days if it is satisfied that there was sufficient cause for not filing it within that period. The State or National Commission is required to decide the appeal as far as possible in their 90 days from the first date of hearing.
5. Where a complaint instituted before the District Forum, the State Commission or the National Commission, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the dentist such cost, not exceeding 10,000 rupees, as may be specified in the order.
6. Where dentist or the complainant fails to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, dentist or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than 2,000 rupees but which may extend to Rs. 10,000 or with both. In exceptional circumstances the penalties may be reduced further.

✓ Conclusions

Dentists are often ignorant about the laws governing their profession. This article is an attempt to give simple explanations of various laws and legal issue affecting dentists. There is the need for maintaining the records officially and professionally to protect against any commercial, legal and medico-legal litigation. Records are the most important factors needed to prevail in the lawsuit. Written records, including medical and dental history, chart notes, radiographs, photographs and models, are the only available guidelines from which to deliberate in a negligent lawsuit and must be meticulously kept. [3] All records must be contemporaneous, and must be signed and dated. Legally, dentist written records carry more weight than patient's recollections.

The legal process is difficult and distressing to navigate, so it is best to avoid this when possible. Once a negligent lawsuit is filed against the dentist, a complex legal maze is opened. A dental practitioner needs the help of a competent attorney who specializes in such litigation. The best defense is avoiding the lawsuit in the first place.

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vocational dental practitioners. Legal structures and processes that impact in general dental practice The starting point of any book on dento-legal perspectives in general practice ought to be an overview of the legal system, as well as how healthcare fits into the regulatory framework. Even before this it is important to provide an understanding of what dental law is and why it is important. Forensic dentistry is an investigative aspect of dentistry that analyzes dental evidence for human identification. The forensic dentist plays an important role in our justice system. This field of dentistry is divided into forensic odontology and jurisprudence (the science of law). 5. FORENSIC PSYCHIATRY examines and testifies about the aspects of legal sanity, human motivation, and possible personality profile. 6. FORENSIC ENGINEERING uses engineering to investigate incidents such as airplane crashes, auto accidents, and structural collapse. 7. QUESTIONED

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