



NEGLIGENCE IN DENTISTRY –HOW TO BE SAFE

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ABSTRACT

The patient-doctor relationship has transformed over the last two decades. Health professionals are increasingly viewed as providers of service for consideration. Consumer Protection Act (CPA) of 1986 was enacted for better protection of the interests of consumer grievances. In comparison of the level of awareness among medical and dental professionals it was found that Dentists are often ignorant about the laws governing their profession. Thus it is imperative for health professionals today to be aware of such laws, which will be beneficial to patients and doctors and society as a whole. This review explores the definitions of 'negligence', negligence in various dental treatments and discussing their implications with respect to civil and criminal liability of dentists. Therefore, dentists need to update their understanding on consumer protection act and its amendments to be on a legally safer side.

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INTRODUCTION

The health profession has long been considered as the noble profession¹. The doctor or dentist frequently alleviates patients distress and, on numerous instances, saves lives. The impact of health professionals in improving standards of health and well-being in society has rejected well on the medical and dental professions. It is, therefore, not uncommon for patients to hold senior practitioners as fondant¹. The trend, however, has changed in recent decades - the doctor/dentist is increasingly looked upon as someone who provides service for consideration (i.e., provides treatment/consultation in return for remuneration). Nevertheless, the element of trust is still relatively more but, on occasions when the faith in a doctor or dentist is breached (the reasons for which could vary widely), patients may not look upon the health provider sympathetically. Throughout the world, the public has become more aware of their rights - legal literacy supplemented by modern legislations has made the society increasingly compensation-oriented¹. India is no exception and, in recent years, there has been a steady rise in the number of all classes of claims in which damages are sought for personal injuries - whether they are sustained in road accidents, at the work place, or in health services¹.

Health professionals are increasingly viewed as providers of service for consideration. Public awareness of medical and dental negligence in India is growing. Hospital managements are increasingly facing complaints regarding facilities,

standards of professional competence and appropriateness of therapeutic and diagnostic methods.

Negligence can occur in any aspect of professional practice, whether history taking, advice, examination, testing or failing to test, reporting and acting on results of tests, or treatment.

The underlying basis for this trend is the classification of individuals as consumers. Every individual has daily needs - from food and shelter to education and sound working environment - which keep evolving throughout ones life². Thus, in the literal sense, every person is a consumer - we visit a market as a consumer, expect value for money, information about the mode of use of a product, etc. However, there may be instances when a consumer perceives as having been denied the quality she/he is entitled to or, worse, cheated or harassed².

Negligence

What is negligence? The word negligence has been defined as lack of proper care and attention; culpable carelessness and is derived from Latin *neglego* or *neglect*⁴. Neglect has been described as fail to care for or to do; overlook the need to; not pay attention to; disregard⁴. However, some consider that negligence cannot be described in a dictionary form⁵; it has been held by the courts that in a particular situation, a particular act - which falls short of being described as a reasonable act in that particular circumstance - may be called a negligent act. Negligence, in general, is the breach of a duty caused by omission to do something which a reasonable person would do, or doing something which a prudent and a

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reasonable person would not do. The Supreme Court of India believes that the three: duty, breach, and resulting damage are the essential components of negligence⁶.

The Supreme Court also believes that negligence in context of the health profession necessarily calls for a different viewpoint. To infer rashness or negligence on the part of professionals, in particular a doctor/dentist, additional considerations apply. Negligence varies from profession to profession. A simple lack of care, an error of judgment, or an accident, is not proof of negligence on part of the health professional. So long as a doctor follows a practice acceptable to the profession of that day in the region, she/he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available⁶.

When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of professionals has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular mishap cannot be the standard for judging the alleged negligence⁶. A professional may be held liable for negligence on one of the two findings: either she/he was not possessed of the requisite skill which she/he professed to have possessed, or, she/he did not exercise, with reasonable competence in the given case, the skill which she/he possessed⁶;

Consent in Dentistry

Consent has formed an integral part of patient treatment and management. Consent in dentistry follows the same basic principles as in other disciplines of medicine. Normally there are a number of different options available to a patient and all of these should be discussed with the patient so they are able to give full consent.

A dentist must explain the proposed treatment to the patient, the risks involved, and the possibility of any alternative treatment and ensure that appropriate consent is obtained. As there are often a number of different ways of treating a particular dental problem, the patient must understand all of the options available and be able to choose the treatment he/she would like.

Legal Issues and Dentist

While providing the oral healthcare services, a dentist has to follow certain set of standards to avoid any litigation in the name of malpractice. Consent is a fundamental and established principle in the Indian Law. Medical or dental records are documentary evidence as per the Indian Evidence Act, 1872. Healthcare malpractice can be challenged under three main categories in the court of law, that is, civil and criminal depending on the nature of offence and Consumer Protection Act, 1986.

Dental Negligence

The Supreme Court of India has observed that the essential components of negligence are three: 'duty', 'dereliction', and 'damage' as stated in the Law of Torts^{11,12}.

Negligence is the act of omission or commission of an act that is done by a doctor in this case a dentist who has not done his job or who had done his job carelessly. For an act to be considered negligent, dentist owed a certain standard of care but did not maintain that standard. Or if there is an injury

resulting from the lack of care and a connection (proximity) between the negligent act and the result and injury¹². Some of the dental negligence acts are failure to attend emergency, unable to prevent cross infection between patients and health care persons, not fulfilling patients 'right to information about the procedure.

Test used to determine negligence (Bolam test)

The test of negligence is a test of the reasonable man. What a reasonable man must have done, if not done or vice versa would result in an inference of negligence. The test of a skilled professional is the test of an ordinary man with the requisite amount of knowledge and not one with higher degree of knowledge. What is required to be seen is that in the given circumstances was the treatment given by the doctor justified. Mere difference of opinion among medical faculty would not constitute as liability upon a doctor on the course adopted by him/her¹³.

Dentists are liable for negligence under four categories^{11,13}

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

Tortious liability (Civil liability)

When a dentist is directly liable for an act of negligence in his clinic or hospital, it is called primary 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. 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^{13,14}.

Contractual liability

A breach of any aspect of the implied contract 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 liability¹⁵.

Criminal liability

Criminal negligence is considered to be a crime against society and not just the aggrieved part. The important offences inviting criminal liability with regard to negligence are: A rash or negligent act resulting in death, (Sec 304 A IPC), An act endangering the life of a person (Sec 336 IPC), A rash or negligent act causing simple injury (Sec 337 IPC) and grievous injury (Sec 338 IPC)^{9,15}.

This liability normally lies with an identifiable individual or groups of individuals. Criminal liability is penal and involves punishment in the form of imprisonment or fine or both^{12,16,17}.

Statutory liability

A dentist is liable if there is any infringement of statutes. They then become accountable to a statutory body. There are many statutes dealing with practice of doctors and dentists, as well as hospitals. Under statutory liability, dentist is liable some acts such as Bio-medical waste (Management and handling) Rules 1988, Drug prescription policy and Drugs and Cosmetics Act, 1990 and Clinical Establishment Act, 2010¹⁶.

Alleged Negligence in Various Branches of Dentistry

Negligence in Minor Surgical Procedure

- Extraction of wrong tooth
- luxation of adjacent tooth
- Sinus perforation and displacing roots into maxillary sinus
- Mandibular fracture during extraction
- Excessive soft tissue injury
- Nerve injury

Negligence in Endodontic Procedure

- Broken file in canal
- over obturation
- Air embolism
- Sinus perforation
- over hanging margins

Negligence in Prosthetic Procedure

- Overhanging margins

Negligence in Pedodontic Procedure

- Injection of hydrogen peroxide in place of LA
- Aspiration of instruments
- Damage to the permanent tooth bud
- Over dose –medication

Negligence in Ortho

- Root resorption
- Excessive bone loss leads to mobility of teeth
- TMJ injury
- Loose brackets in mouth leads to aspiration
- Failure to correct habits
- less time period of retainer

Negligence in OMR

- improper diagnosis
- Unwanted radiation exposure
- improper medical history
- Delaying the surgical procedure by medical management

Negligence in Implant Procedure

- post operative infection
- bone loss around the implant
- sinus perforation
- nerve damage

These types of complication happen when the dental surgeon is not experienced enough regarding the treatment procedure and not knowledgeable. Pure cause is negligence. The dental surgeon should first evaluate the case before starting with pre-operative radiograph and should assess the difficulty related to the case. All the doctors should follow ethics and some basic principle while doing patients. Even when a error happen in their clinical practice, they should be truthful enough to call the specialist and correct the mistakes, rather than sending the patient without informing them regarding the complication. Negligence 90% of the time happen, when the doctor is feared regarding the name and fame that they have earned in the society. They have the fear of losing the patient if they admit their mistakes, so they tend to hide it. The dental surgeon

should call or refer the case to the concerned consultant to do a good and better practice.

This leads to development of mistrust in the patient and leads to legal action towards the doctor.

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

Who is liable¹⁸?

- Dentists with independent practice rendering only paid 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.

Who is not liable¹⁸?

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

What should a dentist do in case of alleged negligence¹⁸?

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. Answer all the queries of patient / relative and do not mind their repeated questioning, harsh attitude and at times even abusive language. 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

Dental negligence falls under section 2 (0) of the Consumer Protection Act (CPA) because Indian Dentist Act (IDA) had no provision to:

Entertain any complaint from the patient

- Take action against dentist in case of negligence

- Award compensation

Consumer Courts¹⁹

1. District Forum (one or more district forum 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. It 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 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 within 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.
- It is mandatory 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 things¹⁸
 - 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 Rs10,000 or with both.

CONCLUSION

Mistakes occur in every profession, as it does in life. It is probably every individual's duty to avoid errors and foresee the potential for mistake but, on occasions, it simply may become unavoidable. Unfortunately, in the health profession mistakes could result in serious consequences for the patient and, in turn, lead to the doctor/dentist being made answerable. The dentist has a duty to warn the patient of risks inherent in the treatment procedure. All records must be signed and dated. Legally, dentist written records carry more weight than patient's recollections. It is concluded that the potential for civil lawsuits against dentists for negligent actions is existent, although the prospect of a dentist being held liable for criminal negligence is low. The legal process is difficult and distressing to navigate, so it is best to avoid this when possible. 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.

References

1. Kulkarni HG. Medical profession and law. Cr L J 2004. p. 210-4.
2. Commentary on Consumer Protection Act. Available from: http://ncdr.nic.in/1_1_2.html. [last accessed on 2008 Apr 28].
3. Pocket Oxford Dictionary. Oxford: Oxford University Press; 1994.
4. Bhullar DS, Gargi J. Medical negligence-majesty of law-doctors. *J Indian Assoc Forensic Med* 2005; 27:195-200.
5. Mathew J. State of Punjab and another (2005) SCCL.COM 456. Criminal Appeal No. 144-145, 2004. (Cited in: Bhullar DS, Gargi J. Medical negligence-majesty of law-doctors. *J Indian Assoc Forensic Med* 2005; 27:195-200.
6. Al-Ammar W, Guile EE. A one year survey of dental malpractice claims in Riyadh. *Saudi Dent J* 2000 May; 12(2):95-9.
7. Milgrom P, Fiset L, Whitney C, Conrad D, Cullen T, O'Hara D. Malpractice claims during 1988-1992: a national survey of dentists. *J Am Dent Assoc* 1994 Apr; 125(4):462-9.
8. Prasad S, Menon I, Dhingra C, Anand R. Awareness of Consumer Protection Act among Dental Health Professionals in Dental Schools of Ghaziabad, India. *Oral health and dental management*, 2013 Vol. 12 - No. 4 - 262-8
9. D' Cruz L. Book 'Legal aspects of general dental practice'

10. Paul G. Medical Law for dental surgeons. 1st ed. New Delhi, India: Jaypee Brothers; 2004. pp. 75–90
11. Vashist A, Parhar S, Gambhir RS, Sohi RK, Talwar PP. Legal modalities in dental patient management and professional misconduct. *SRM J Res Dent Sci* 2014; 5:91-6.
12. Rai JJ, Acharaya RV. Dental negligence and its liabilities in a nutshell. *Indian Journal of Dental Sciences*. 2014; 5(6):84-88.
13. Bali A, Bali D, Iyer N, Iyer M. Management of medical records: Facts and Figures for Surgeons. *J Maxillofac Oral Surg*. 2011;10(3):199-202.
14. Mathur S, Chopra R. Ethical issues in modern day dental practice. *Online J Health Ethics*.2012; 8(2):1-12.
15. Dhawan R, Dhawan S. Legal aspects in dentistry. *Journal of Indian Society of Periodontology*. 2010; 14(1):81-4.
16. Bansal YS, Singh D. Medico-legal aspects of informed consent. *Indian Journal of Forensic Medicine & Toxicology*. 2007;1(1):19-23.
17. Available from: <http://www.Medindia.com>. Cited 2009 May 25th
18. Savanur S. Book ‘Dento-legal aspects of CPA’

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