Not Practising Accepted Protocols While Examining a Patient

A man approached the medical council and filed a complaint against the treating doctor stating that his wife died because the treating doctor did not properly examine her well at the first visit and simply prescribed treatment for upper respiratory infection. As a result, his wife developed serious complication during the course of treatment. She eventually succumbed to her illness despite treatment.



Lesson: In a order DMC/DC/F14/246/2007, the council highlighted the importance of right protocols being followed while examining a patient.

CASE SUMMARY

A complaint was submitted to the Delhi Medical Council by Mr X (Complainant) against Respondents 1 to 4 alleging medical negligence and professional misconduct. The council examined the complaint, written statements of Respondents 1, 2 and 4, medical records of Hospital Y and other documents on record. Respondent No. 3 did not participate in proceedings in spite of notice.

Course of Events

- 21.8.2003: Respondent No. 1 first saw the patient in his clinic. The diagnosis was upper respiratory tract infection (URTI); treatment started accordingly.
- 24.8.2003: Respondent No. 1 was called for a home visit as the patient continued to have symptoms. Further necessary treatment was started after examination.
- 25.8.2003: The patient was still unrelieved and her condition worsened. Dr B examined her and advised immediate hospitalization in Hospital Y. A diagnosis of Pneumonia L with viral fever was made; necessary treatment started.
- 28.8.2003: Despite treatment, the patient could not recover and died. An autopsy was not done, because the patient clinically had fulminant type of pneumonia, which is associated with high mortality rates even with treatment.

Complainant Allegation

The main complaint was that Respondent No. 1 missed the diagnosis on the two occasions he saw the patient because he did not examine the patient properly.

Council Observations

According to Respondent No. 1, he had examined the patient and had also done a chest examination. However, the court observed that as the patient had already died it was not possible to verify this statement. Moreover, fulminant type of pneumonia was not easy to diagnose in its early stages and it also takes a rapidly progressive course. The treatment prescribed by Respondent No. 1 encompassed the entire spectrum of the existing clinical situation. Respondent No. 1 did not have access to the daily progress of the patient. Dr B was contacted only when the patient developed difficulty in breathing, subsequent to which the patient was hospitalized in Hospital Y.

The hospital authorities also failed to provide the patient records to the complainant despite repeated requests.

Council Opinion

The treatment administered to the patient at Hospital Y was in line with the accepted professional practise for such clinical situations. And, the patient died due to the disease, which takes a natural fulminant clinical course. The patient unfortunately developed the complication of several fulminant type of pneumonia complicating a simple viral URTI. The approach taken in the initial treatment provided to the patient is disturbing because a doctor is expected to examine a patient properly or to at least follow the scientific assessment protocol, which may enable him to arrive at a probable diagnosis.

Respondent No. 1 stated in a written statement that the presenting complaints on the first visit on 21.8.2003 were fever, blocked nose, slight cough and loss of appetite. On examination, vital signs were normal; there was mild congestion in the throat, patient was febrile and the chest was clear on examination. When he saw the patient the second time on 24.8.2003, the vitals were stable, throat was congested; there were few crepts on auscultation; so, he diagnosed the patient as having lower respiratory tract infection (LRTI) with URTI for which he prescribed ofloxacin, cough expectorant, analgesics and gargles. Though the prescription notes of Respondent No. 1 contain the treatment prescribed, they do not mention the diagnosis, which he stated in his written statement.

Council Judgement

The Council issued a warning to Respondent No. 1 with a direction to adopt accepted protocol whilst examining patients in future. The complaint was disposed as no medical negligence could be attributed in the treatment of the patient.

Reference

1. DMC/DC/14/2/Comp.246/2007/dated 29th May, 2007.

FOLLOW THE FIVE PRINCIPLES OF AIDET TO IMPROVE DOCTOR-PATIENT RELATIONSHIP

Most doctor-patient disputes today are because of a communication gap or miscommunication. To ensure a better doctor-patient relationship, there are etiquettes that doctors should observe, whenever a patient comes for a consultation. Remember the acronym AIDET; it represents the principles that doctors should follow to communicate better with their patients and build a doctor-patient relationship based on mutual trust and respect. These principles are:

- **A**cknowledge: Whenever a patient comes to you, greet the patient and call them by his/her name.
- **I**ntroduce: Introduce yourself or any other member of your staff to the patient and what you would be doing for the patient.
- **D**uration: Keep your patient informed about the expected duration of treatment; how long would treatment continue or, any waiting time.
- **E**xplanation: Always describe to your patients the diagnosis, the tests or procedures in a language they are able to understand. *This is the concept of informed consent.*
- **T**hank you: Say thank you to the patient for their communication and cooperation. *Doing this will develop trust and respect in the patient for you as his/her physician.*

Adapted from: www.studergroup.com/hardwired-results/hardwired-results-03/hardwire-the-five-fundamentals-of-service

THE THREE COMPONENTS OF MEDICAL NEGLIGENCE

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do[1].

The essential components of negligence, as recognised, are three: "duty", "breach" and "resulting damage", that is to say:[2]

- The existence of a duty to take care, which is owed by the defendant to the complainant;
- The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and
- Damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant (Para 1.23). If the claimant satisfies the court on the evidence that these three ingredients are made out, the defendant should be held liable in negligence (Para 1.24).

The standard of care has to be judged in the light of knowledge or equipment available at the time (of the incident) and not at the date of the trial.

References

1. Yadav M, Singh H, Sharma G, et al. Recent scenario of criminal negligence in India doctor, community & apex court. JIAFM. 2005;27(4):252-7.
2. 334/2005/SCI/144-145 of 2004: Jacob Mathew vs State of Punjab and Anr: 5th day of August 2005: R C Lahoti, CJI: Hon'ble Mr. Justice G P Mathur, Hon'ble Mr. Justice P K Balasubramanyan.

What is not Medical Negligence?

A "medical accident" is not negligence

In Jacob Mathew v. State of Punjab SC/0457/2005: (2005) 6 SCC 1, the Supreme Court of India has observed: "… *a mere accident is not evidence of negligence*."

"Not getting cured" is not negligence

In its judgement in Jacob Mathew v. State of Punjab SC/0457/2005: (2005) 6 SCC 1, the Supreme Court of India has observed: "*Simply because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of res ipsa loquitur*."

"Error of judgement" is not negligence

In Jacob Mathew v. State of Punjab SC/0457/2005: (2005) 6 SCC 1, the Supreme Court of India has observed: "… *an error of judgement on the part of a professional is not negligence per se*."

Deviation from medical practise does not always mean medical negligence

The Supreme Court of India has observed in Jacob Mathew vs. State of Punjab SC/0457/2005: (2005) 6 SCC 1: "*Deviation from normal practise is not necessarily evidence of negligence. To establish liability on that basis, it must be shown:*

- *That there is a usual and normal practise*
- *That the defendant has not adopted it and*
- *That the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care*."

Errors can be made in an emergency even by experts and may not amount to negligence

In SCI: 3541 of 2002, dated 17.02.2009, Martin F. D'Souza vs Mohd. Ishfaq, the Supreme Court of India has observed: "*The higher the acuteness in an emergency and the higher the complication, the more are the chances of error of judgement.*"

Difference of opinion is not negligence

The Supreme Court of India has observed in Jacob Mathew v. State of Punjab SC/0457/2005: (2005) 6 SCC 1: "*In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one men clearly is not negligent merely because his conclusion differs from that of other professional men. The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care.*"

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