

Ethical Consideration in Doctor Patient Relationship

*Thakur S.D , **Joshi Rajeev

* Professor & Head of Deptt, Deptt. Of Forensic Medicine, MAMC,), ** Asstt. Professor, Deptt. Of Forensic Medicine, MAMC, Agroha (Hisar)

Abstract

In the present context of commercialized medical practice, there is a strong public feeling that doctors have become traders. Doctors, on the other hand, have reacted in a contradictory manner. Some have found the label 'trader' offensive and refuse to participate in any debate on the subject. Others have accepted that a large part of present day medical practice is nothing, but trading by qualified as well as non-qualified medical persons

Keywords

Ethics, Doctor Patient Relationship, Consent, Medical Negligence.

Introduction

Ethics

Moral principles that govern a persons behavior. Rules of conduct based on moral principles which are framed by a recognized association are called 'Code of Ethics'.

Medical Ethics

Moral principles that should guide members of medical profession in their dealings with patient, state and each other.

Code of Ethics

The various codes of medical ethics are -

- 1) Charak's oath
- 2) Hippocratic oath
- 3) Declaration of Geneva
- 4) International code of Medical Ethics

Charak's Oath: - In eighth century B.C. famous ancient Indian physician -CHARAK-laid down an oath that was administered to students, teachers & vaidyas.

Hippocratic Oath

Hippocrates (460 B.C. to 377 B.C.) Practised Medicine in Island of Cos in Greece. Hippocrates knows as father of western medicine. This oath is still administered to Doctors in many parts of word.

Declaration of Geneva

This oath was accepted by World Medical Association at Geneva in 1948 & was amended by W.M.A. in August 1968 in Sydney: It is followed by M.C.I. as Code of Ethics.

Declaration to be made by Doctors in India at time of Registration

- 1) I solemnly pledge myself to devote my life to service of humanity.
- 2) Even under threat I will not use my knowledge contrary to the law of humanity.
- 3) I will maintain utmost respect to human life from the time of conception.
- 4) I will not permit consideration of religion, race, social status or politics to intervene between my duty to wards patient.
- 5) I will practice my profession with conscience & dignity.
- 6) The health of my patient will be my first consideration.
- 7) I will respect the secrets which are confined in me.
- 8) I will give to my teachers the respect and gratitude which is their due.
- 9) I will maintain by all means the honour and noble tradition of medical professor.
- 10) I will treat my colleges with respect & dignity (treat them as my brothers)

I make these promises solemnly, freely and upon my honour.

The above declaration is to be read and then signed by a Doctor at time of Registration before Registrar of Medical Council.

Reprint requests: Thakur S.D

Professor & Head of Deptt.
Deptt. Of Forensic Medicine, MAMC,
E-mail: drrajivjoshi2006@yahoo.co.in

Doctor Patient Relationship

Are as old as medical profession. When a doctor agrees to treat a patient, the two parties enter into a contract and 'Doctor Patient Relationship is established. The relationship may be expressed or implied because of which they have some duties /obligation to each other.

Duties of Doctor towards Patient:

- To exercise reasonable degree of skill & care.
- To maintain professional secrecy in regard to patients disclosures before doctor.
- To provide quality treatment.
- To attend the patient
- To take proper consent
- Continuation of treatment
- Referrals / Consultations.

Exceptions to professional Secrecy - Privileged Communications

- In Court of Law.
- Duty towards state.
- Crime under section 202 of I.P.C.
- Insurance Reports
- Duty towards Society.

Duties of Patient towards doctor

- To carry out instructions of doctor
- To provide all possible information
- To pay doctor's fees/payments.

Medical Negligence (Medical Malpractice or Malpraxis)

Def:-It is defined as the omission to do something (Act of omission) which a reasonable professional would do, or doing something (Act of commission) which a reasonable professional would not do.

Types

- 1) Civil Negligence
- 2) Criminal Negligence

Civil Negligence:- Kind and degree of negligence is such that it gives a right to patient for compensation. The onus of proving negligence rests on the plaintiff.

Criminal Negligence:- Gross negligence that shows utter disregard for life & safety of others

in a manner that amounts to crime against the state. Which is punishable under Criminal Law Section 304 - A of I.P.C (Rash or negligent act not amounting to culpable homicide).

Essential Conditions to prove Negligence

Liability for negligence arises only where all the conditions mentioned below are satisfied in that particular case.

- Duty to care
- Dereliction or breach of duty
- Damage
- Direct relation between doctors conduct & damages.
- Damages that resulted must be reasonably fore seeable.

Multiple actions by different agencies against a doctor for negligence.

- 1) By State under Criminal Law
- 2) By Medical Council for misconduct
- 3) By department - Govt. or Private organization
- 4) In Civil Court for damage.

Defences against Negligence

- Denial of duty of care
- Duty performed in accordance with prevailing standard.
- Therapeutic misadventure - "Misadventure is defined as an unfortunate incident that might result in injury or death accidentally, while performing a legal act without negligence or intent to harm".
- Error of Judgment
- Contributory Negligence
- Valid informed consent
- Doctrine of Resjudicata.
- Time limit to file case. (within 2 years of incident).

Legal Interpretation of Medical care as service

Supreme Court of India has held in Indian Medical Association case that following aspects of medical care were affected by the provisions of Consumer Protection Act - 1986

Service rendered to patient by a doctor (except where service is rendered free of charge to every patient) by way of consultation, diagnosis and treatment both medical and surgical would fall within the ambit of service as defined in section 2(1) of the Consumer Protection Act-1986.

Health care Institutions have been divided in three groups

- Where services are given free of cost to all.
- Charges are paid by all patients for services provided.
- Charges are paid by some patients and some category of patients, who cannot pay are rendered free service.

Different type of courts to deal case under consumer protection Act - 1986.

- District forum.
- State Commission
- National Commission

Vicarious Liability

In law it means that a person becomes liable to pay damages for an act of negligence committed by his servants or agents in the course of their employment. The person who is responsible is known as - Respondent Superior.

Negligence in a Hospital or Nursing Home

Doctor may be held responsible for negligent act of third party i.e. a nurse or theatre assistant, if act was done in his presence. (Under civil law but not under criminal law).

Doctrine of Corporate Liability

Hospital authorities are responsible for negligence of doctors / Nurses - To prove corporate liability the plaintiff has to prove that hospital authority was aware that doctor alleged of negligence was providing substandard care & treatment.

Infamous Conduct or Professional Misconduct

Such a conduct of doctor which is considered disgraceful or dishonorable by professional colleagues of good repute & competency.

Power to take action

M.C.I. or state medical council

What amounts to infamous conduct

- Adultery or improper conduct or association with patient.
- Conviction by court of law
- Issuing fake certificates
- Selling poisons to public
- Employing unqualified persons
- Advertising
- Fee splitting or Dichotomy
- Abortions &
- So many other conditions

Punishment for Infamous Conduct:

Professional death sentence

Consent:

Agreement to accept consequences of an action. Also defined as 'Voluntary agreement, compliance or permission'.

Consent in Medicolegal Cases

\Consent is required for examination of all medicolegal cases except where a person is in police or judicial custody.

- Section 53 of Cr.P.C.
- Section 54 of Cr.P.C.
- Section 88,89,90,&92 of I.P.C.

Consent of Spouse

- Routine examination
- Operations
- Treatment resulting to impotence & sterility
- In relation to M.T.P. Act - 1971

Doctors Responsibility in Criminal Matters

Under section 202 of I.P.C. a person should at once communicate to the police any information about a criminal act. But in case of a doctor there is discretion left to doctor.

Summary

In any relationship between two persons or parties problems or disputes are going to arise. Doctor should do what is in the best interest of patient. Medical profession is progressing rapidly so a doctor has to keep his knowledge upto date.

“Treat a patient in a way as you would wish others to treat you if you were patient”. In my experience conduct & behaviour of a doctor make the difference between a Good Doctor & not so good Doctor. Professional competence, knowledge of duties and law & good conduct and behaviour will minimize disputes in this relationship.

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