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Review article

Medico Legal Issues in Emergency Pediatrics

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ABSTRACT

With the advent of better patient monitoring facilities and advancement of knowledge in maintaining vital parameters till near normal, emergency child care is a significant advance in field of pediatrics. This has ushered in new era of critical care and emergency treatment in pediatrics. A number of tertiary care centers in the form of intensive premature, neonate and child care units, with huge investment in infrastructure have come up. State of art infrastructure costs a fortune and escalates cost of quality care in pediatric treatment. Enactment of Consumer Protection Act along with inclusion of medical professionals in its ambit has put cases of alleged medical negligence in fast tract of judicial remedy. Heavy cost of emergency and critical care treatment has made this emerging pediatric subspecialty, a hotspot of litigations. In today's scenario, doctors are health risk managers of their critically ill patients, who need vigilant monitoring and timely treatment to avert further crisis and complications that are common and foreseeable. Any action or inaction of doctor in emergency room that accelerates or increases the health risk may result in allegation of breach of duty of doctor. Courts take lenient view regarding making errors in diagnosis. This is because so many diseases present to doctor with common symptom and sign complexes and doctors may make an error of judgment, if the disease presents with rare, atypical signs and symptoms. Doctor has liberty to choose treatment after arriving at tentative diagnosis. Courts take very strict view, if there is deficiency in procedure or conduct of a treatment. If a health damage or hazard occurs due to such breach of duty of doctor in emergency room then he may have to defend himself from the charges of medical negligence in court. Since treatment costs are high and results of treatment of critically ill may sometimes result in some sort of disability or even death so compensations asked by patient litigant are astronomical.

Key words: Emergency room care; Medical negligence; Duty of care in emergency; Critical care, Omission of duty; Death; Disability.

INTRODUCTION

In today's scenario doctors are health risk managers of their critically ill patients. Any action or inaction (act of omission or commission) of doctor which increases the health risk of a critically ill patient may result in an allegation of breach of duty of doctor . Establishment of consumer courts has put the cases of medical negligence on fast tract remedy. There is no limit for compensation money for alleged medical negligence. Amount of money asked is mind-boggling . Patients may sue a doctor for compensation by asking usually lakhs and sometimes crores of rupees . Medical indemnity insurance policy is the only way out to practice emergency and critical care pediatrics peacefully in such an odious scenario by which these risks of litigations can be managed and if any claim arises it could be paid.

Likely situations of medico-legal importance

Situation may arise in emergency room where it is mandatory to inform law enforcers and/or legal authorities (usually local police station) because doctors duty is to treat the patient and duty of police is to find out whether any crime was committed on victim/patient for making him/her suffer from problems listed as:

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Tetanus, gas gangrene, significant burns, head injury, significant violence needing indoor admission, motor vehicular and other accidental fractures, accidental falls needing indoor admission, attempted suicides , attempted poisoning, attempted homicide , human or animal or snakebite, rape , minor's pregnancy and MTP , battered baby. In cases of death, post mortem should be insisted.

In case of attempted poisoning or poisoning doctor is duty bound for collection of specimens: stomach wash (usually 100ml or more in a clean glass bottle), blood samples in EDTA and plain bulb (usually 2ml each), as applicable and feasible and hand it over to police with proper labeling of name, sex, age, time of collection, brief history and treatment given. In case of death due to poisoning post mortem should be insisted.

There are situations apart from this, which may too require informing the police, depending upon facts and circumstances of a case. Doctor should continue to treat with meticulous history, examination, investigations needed and treatment as per reasonable norms of medical practice.

They are

1. Indoor admitted child falling from cot, bathroom and getting significant injury.
2. Operation table deaths or post operative critically ill child dying.
3. Child developing gas gangrene and gangrene due to infused fluids or intravenous lines.
4. Almost instant intra muscular nerve palsy
5. Deaths resulting from anaphylaxis due to a drug.
6. Deaths due to Steven Johnson syndrome due to drugs.
7. Post procedure death like for example after lumber puncture, liver biopsy and other biopsies.
8. Deaths due to bleeding and disseminated intra vascular coagulation.
9. Post anesthesia critical child dying.

What to do if a child is brought dead by mob (or lot of relatives)?:

1. If there is a mob (or lot of relatives) immediately the divide doctor's working team in two parts. One team shall explain the parents that child is dead, yet if you permit we may give some treatment but situation will not change. Second team will tackle the mob that wants the child to be treated anyhow. Explain them that child is already dead but our team of doctors is trying.

2. When a child is brought by mob, it may happen; once "so called" treatment is started then mob may quietly disperse. Whereas it may so happen, number of people in mob may increase. If number increases then one should surely inform police for protection and then only declare final death.

3. Be careful of a child brought dead by mob. It is a situation where little loose talk may spark physical abuse of medical team or destruction of hospital property.

4. Declaration of death in a child brought dead by mob should be essentially preceded by "so called treatment", even putting on respirator is a good effort. This will buy time and wisdom for medical team to declare death at the terms and conditions desired by medical team rather they be swept away with unruly behaviour of mob.

What to do if child is brought dead by parents?

1. Declare death, inform police and ask for postmortem.

2. If mob gathers later on then inform police, hold talks with mob leader, be empathetic, sympathetic, humanistic and soft-spoken. Let someone senior handle the situation.

What to do if child is brought dead who was under you treatment for a serious disease?

In such a case one may have to issue death certificate. In United kingdom (U.K. rule of 21 meaning if patient is under treatment for 21 days then one may have to issue death certificate.

How to transport sick and serious?

1. Doctor and nurse team should accompany the patient .

2. Ambulance should have enough variety and stock of emergency medicines, injections, intravenous fluids and oxygen.

3. Monitoring equipments like stethoscope, blood pressure manometer, cardiac monitor and preferably a defibrillator and a ventilator should be available.

Standard of medical care in emergency room is higher because emergency room care claims giving state of art services to patient admitted, as listed below:

1. Duty of care in emergency room (which means actively avoiding all kinds of dangers i.e. health risks from all sources i.e. from disease, drugs and surgery) to your patients by continuous monitoring of all relevant vital parameters and investigations .

2. Law requires proportionate degree of care in emergency room. Higher the risk undertaken higher is the standard demanded by law in caring for critically ill patients.

3. Any lack of care on the part of medical practitioner in monitoring or treatment, which causes acceleration of disease process leading to death or disability is actionable under law.

4. Under law for actionable negligence, such an acceleration should be caused by breach of duty of a doctor (lack of due care or caution in monitoring critically or delaying or omitting to give treatment) which should result in actual (proved) physical or mental damage to patient

5. There should be close nexus between such acceleration of disease process caused by negligence of doctor and not because of inherent nature of disease. Such acceleration should cause disability or death due to breach of duty (lack of due care and caution) resulting in damage.

6. Legally if there is no resultant damage due to lack of care, then no compensation can be given to patient .

About consent, dissent, assent, counseling, forewarning

1. In emergency rooms standards for informed consent are lower than usual cold situations. In dire emergency, courts waive of consent in favour of giving lifesaving treatment, even though nature of treatment may amount to adventure sometimes. . In cases of accident victims, courts takes very strict view if no attempt is made to save life , . In a case of a road side accident, victim's vitals were stabilized by giving emergency treatment before shifting to higher centre, where one limb had to be amputated because of delay in referral. Court did not hold doctor negligent in causing delay in referring because it held that stabilization of vitals was crucial before transfer of patient otherwise patient would have been dead during transit. In another case of vehicular accident, a reasonable delay in preparing for operation and arranging for 19 pints of blood was permitted by court even though patient died postoperatively

2. Sometimes in emergency, omission to perform an operation for want of consent may amount to negligence . In a case, emergency appendicecctomy was not done, for want of consent nor dissent of patient was taken in writing. In this case appendix later burst and patient died. Hence doctor was held liable. It is to be remembered, written dissent is more important than consent for invasive procedure, surgery, investigation, transfer and referral in emergency situations

About prevention or detection of complications, monitoring serious patients or treating them or referring them or transferring

About monitoring and record keeping

1. Monitoring serious patients by keeping records and using available monitors and investigations is very important.. Bottom line for monitoring is recording vitals like pulse, respiration temperature, blood pressure and intake and output charts.

2. Remember proper record is valid defense in medical negligence cases as the law asks for show of care rather than cure

About critically ill patients where "known complication" happens which cannot be prevented

In a case, victim's father brought his son bitten by cat. ARV was administered by doctor, due to which he developed neuroparalytic reaction . Patient was hospitalized and he subsequently died in ICU. Court held no negligence on the part of doctor as proper ICU treatment given to patient with care and standard textbooks and WHO report of 1984

mention neuro-paralytic reactions as a well known complication of ARV..

About cases related to anaphylaxis

In a case. doctor did not give penicillin test dose prior to the loading dose nor did hekeep emergency medicines ready for treating anaphylaxis and hence failed to treat the complication thereof. Consequently patient died and hence doctor was held negligent for not treating complication.

About case related to improper intravenous administration in emergency

In the case of Dr. Gian Chand Aggarwal v. Darshana Devi Punjab S.C.D.R.C. I(2002)CPJ,351, doctor administered emergency injection intra-arterially by mistake near a vein adjacent to radial artery. Patient subsequently developed gangrene of thumb and middle finger, which had to be amputated. Court held negligence on part of doctor and patient was hence entitled to get compensation.

About cases of injection related gangrene while giving emergency treatment

1. In the case of Gurusewak Singh v. Dr.Jaskaran Singh , an Intravenous injection of Novalgin given for fever to a 16 year old male, caused gangrene of right leg. Patient had to undergo amputation of right leg at PGI, Chandigarh. Court held the doctor negligent and entitled patient to be given Rs1.25 lakhs as compensation.

2. In another case of Khairatilal v. Dr. Kewal Krishna, 1998 (1),CPJ 181, Punjab SCDRC, emergency intravenous injection of Fortwin, Calmpose, Anafortan and Norphine was administered by doctor for severe pain in abdomen in the right arm of patient. It caused severe pain in fingers of right hand and subsequent gangrene. Three gangrenous fingers had to be amputated at CMC, Ludhiana. Dr. Kewal Krishna was a registered ayurvedic practitioner. Court held that he was not qualified to administer allopathic drugs and so punished him with a compensation of Rs 70,007.50 to patient.

3. In the case of Shanti Devi v. Dr. C.K. Mittal, 1998(3) CPJ 7 Haryana SCDRC, doctor administered IV Pentazocine (Fortwin) and Promethazine (Phenargan) in right arm of patient. Patient subsequently developed gangrene of right hand, so got it amputated at PGI Chandigarh.

About emergency blood transfusion

Sometimes in emergency, wrong group, blood might get transfused resulting in mismatch transfusion reaction. Sometimes AB positive child may have to be given B positive blood in emergency. . Blood transfusion in emergency rooms has been the source of transmitting hepatitis B and HIV infections . It is better to be safe than sorry and proper blood checking and transfusion norms must be followed everytime.

CONCLUSION

This write up is intended to provide the emergency care provider and those who deal with critically ill patients with much desired knowledge and wisdom to bridge the gap of ignorance of relevant laws as applicable, to practice critical care and prevent, solve and understand the day-to-day legal problems related to it. All of us know and have experienced that ignorance breeds and feeds uncertainty. Uncertainty breeds and feeds unfounded fears. We also know unfounded fears usually never become true or actually happen in ones life but makes life stressful and unlivable. In the light of legal knowledge, let us dispel these unfounded legal fears and do right things in right direction. Let us not give up, but practice defensive medicine, for fear of legal wrangles.

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