

Bar, Bench and Bioethical issues: Legal Aspects for Dental Practice in India- A Review

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Abstract:

There is influence of law in almost every aspect of day-to-day human activity including Dental Profession. Thus, dental professionals must be aware of their rights, liabilities, importance of consent and consequences of negligence. Therefore, lack of knowledge regarding medico-legal aspects results in ineffective implementation as well as halts the delivery of standard and efficient services. This review provides an overview of ethical standards, types of consents, importance of informed consent, types of negligence, test of negligence and what the dental professionals must do in order to avoid litigations.

Keywords: medico-legal, consent, Pediatric dentistry, consumer protection act, dental negligence

Introduction:

The health profession, since the very beginning is considered to be the noble profession.

'Professional' refers to the one who practices a learned profession. The essence of each and every health profession is service above self. Nowadays, with increasing awareness about the rights of the individuals and various laws, medical and dental professionals are facing more lawsuits than before. And due to lack of knowledge in the medico-legal aspects that includes informed consent, dental and medical negligence, etc. the health professionals are not able to provide the standard treatment and care which then leads to

legal issues. Thus, with increasing awareness and knowledge about law, it is now necessary for the health professionals to maintain basic standard of care and treatment and train the helping staff to maintain clinical records of the patients, proper consents and clear communication with the patient to avoid any litigations.

Ethics in medicine and dentistry and Ethical principles:

Ethics can be defined as the science of the human character and behaviour in the situations where one can make distinction between the right and the wrong, where duty must be followed and good interpersonal relations should be maintained.¹

6 basic Ethical principles² on which practice of dentistry is based on:

To do no harm, To do good, Respect for persons, Justice, Veracity or truthfulness and Confidentiality

Terminologies:

- **Consent³:** The term consent can be defined as 'two or more persons are said to consent when they agree upon the

same thing in the same sense' according to Section 13 of The Indian Contract Act.

- Preferably taken in a language that patient understands. It is beneficial for the doctor to take a signed consent as it avoid unwanted allegations, suspicion and/or litigations and gives substantial protection to the doctor. Following are the types of consent³:

➤ Implied consent	According to Rowe implied consent is 'by being in the chair at the dental surgery the patient with an open mouth implies that they are there for the dental treatment' and continued 'in the past a dentist would undertake treatment as he or she saw fit, which the patient would accept without argument.'
➤ Proxy consent or Substitute Consent	Provided by parent or relative In cases where patient is mentally unsound or unconscious or is a minor
➤ Loco parentis	In cases of emergency due to unavailability of parent or guardian, person (for e.g. teacher, warden, etc.) bringing the patient for dental treatment can give the consent.
➤ Blanket consent	Printed form is taken which covers (similar to a blanket) almost everything a hospital or dentist might do to the patient, without actually mentioning anything specifically. Not legally adequate for any of the procedure that has any risks or alternatives.
➤ Oral consent	True of simple procedures and is acceptable in certain situations only. Determined by the behaviour of the patient taken in front of the witnesses and is implied consent.

When is consent not valid:⁴

Consent given under fear, fraud or misrepresentation of facts, or by a person who is ignorant of the mis implications of the consent, or who is under 12 years of age is invalid under sec. 90 Indian Penal Code.

➤ Negligence:^{5,6}

Alderson defined negligence as “the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do”.

What can be called Dental Negligence?^{6,7} As observed by the Supreme Court of India the essential components of negligence are: ‘duty’, ‘damage’ and ‘dereliction’ that is stated in the Law of Torts. An act can be considered negligent, if a certain standard of care was owed by the dentist, but failed to maintain the same, or due to lack of care there is an injury and there is a connection (proximity) the negligent act and the resultant injury.

What are non-Negligent acts?⁴

1. In cases of emergency where consent form is not obtained.

2. When patient is not satisfied with the treatment.

3. If the patient does not get the desired or expected relief/result.

4. Charging fees more than what was expected by the patient.

5. When patient fails to follow advice of the doctor and does not get expected or satisfactory results.

What is deficiency of service?⁸

- Any fault, shortcoming, imperfection or Inadequacy in quality or manner of performance that is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Who is Liable?⁹

Hospitals and Dentists with independent practice offering paid services/treatments as well as Doctors/hospitals who are being paid by insurance organisations to their clients.

Who is not liable?⁹

Hospitals and Dentists offering free services.

Types of liabilities ^[9]

<u>Main Types of liabilities:</u>	
1. Tortious liability or Civil liability <ul style="list-style-type: none"> • Primary tortious liability • . Vicarious liability 	When a dentist is proved negligent in his hospital or clinic it is called primary liability. It is usually in the form of compensation preferably by cash.
	Dentist who is employed/hired by a hospital or institution is usually not primarily responsible for negligence, instead the hospital is liable for the negligence. However, in cases where the patient is admitted by the dentist in his/her personal capacity, then the dentist will be considered personally liable.
2. Contractual liability	when a dentist accepts a patient for treatment, an implied contract is established in the doctor-patient relationship. 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. A breach in any aspect of this implied contract may be considered a contractual liability.
3. Criminal liability	Criminal liability is penal nature and involves punishment in the form of fine or imprisonment or both. It is considered to be a crime not only against the aggrieved party but also against society.
4. Statutory liability	If there is any infringement of statutes dentist is liable and they are then accountable to a statutory body. This type of liability mainly depends on kind of infringement and provisions in statute to deal with it.

Consumer

As per definition of consumer in Consumer protection Act 2019, any person who avails any service for a consideration or buys something can be called a consumer⁸. In the list of 'service', Healthcare is not explicitly mentioned, still

it is widely believed that any service of healthcare that are paid for, shall be covered by the gambit of the act. Any service that is health related that is provided by the government hospital or a private hospital where a patient is charged a fee, that can be full or concessional, can be challenged in the consumer court.

Consumer Protection Act ¹⁰:

Instead of enhancing CPA 1986 through amendments, the Government brought outrightly new act, CPA 2019¹¹ that came into force in July 2020, and an updated notification was released in December 2021 regarding jurisdiction under all the three commissions.

Procedure for patient/consumer:¹²

Section 2 of the Consumer Protection Act, 2019 defines a 'complaint' as any written allegation made by a consumer to obtain relief under the Consumer Protection Act in case of an unfair contract, unfair trade practice, defective goods, deficiency of services, restrictive trade practice, or hazardous goods or service. A complaint may also include written allegation to claim the liability against the product manufacturer, seller, or service provider.

1. As provided under section 69 of CPA, a complaint has to be filed within 2 years of date on which cause of action arises.

2. As per section 38 of CPA, a copy of complaint should be sent to dentist within 21 days from the date of its admission directing the dentist to give his version or reply within a period of 30 days, which may be extended up to 45 days. If within 45 days no reply is provided by the dentist, then the court will proceed ex-parte.

Consumers can claim the compensation in consumer courts under various jurisdiction that are:⁸

1. District commission - Jurisdiction up to Rs. 50 lakhs. (Patient can claim up-to Rs. 50 lakhs)
2. State Commission (each state has one state commission) Jurisdiction above Rs. 50 lakhs and up to Rs. 2 crore that is the amount patient can claim is from Rs. 50 lakhs to Rs. 2 crore. It is also a supervisory court and also has the power to call for all the records and can pass appropriate orders in any dispute that is pending or decided by the District Commission.
3. National Commission (entire country has one national commission) Jurisdiction above Rs. 2 crore. Here, the National Commission acts as an appeal agency, for decisions of the State Commission.

The Supreme Court of India acts as court of appeal in cases where the National Commission has served as court of first instance.

What a dentist should do in case a complaint is filed against him for dental negligence:

- First of all, dentist has to appear in court either personally or through advocate.
- Dentist has to file his version or reply.

- In the reply dentist shall defend himself against all the allegations made by the complainant.
- It is mandatory in consumer courts to decide and conclude the cases speedily preferably within a period of three months after filing. One or more of the following things can be directed by the District Commission after the proceedings, if the committee is satisfied by any of the allegations mentioned in the complaint about the service that are proved the commission may order to:
 - return the charges/fees paid by the complainant.
 - award any or all of the following:
 - i. compensation.
 - ii. cost of the case
 - iii. harassment compensation
 - iv. interest of award amount
 - Where a complaint instituted before the District Commission, the State Commission or the National Commission, as the case may be, is found to be vexatious or frivolous, it shall, for reasons to be recorded in the writing, dismiss complaint and make an order that the complainant shall pay to the corresponding dentist such cost, not exceeding 10,000 rupees, as may be specified in order.
 - Where dentist or the complainant fails to comply with any order made by the District Commission, the State Commission or the National

Commission, as the case may be, commission may initiate contempt proceedings against dentist or complainant and may punish 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.

What Pediatric dentists can do as precautions:¹³

Informed consent:

When a parent is consenting on behalf of a child, the considered standard is "what would reasonable parents in similar situation want to know about the risks and benefits to their child before consenting to care." Proper Information about probable outcomes, risks, and consequences for each of the feasible alternatives for care is also an essential part of full informed consent.

Informed consent in Pediatric Dentistry helps clarify that the relationship is a contract between the dental professional and parent on behalf of the intended beneficiary patient, and the dentist can clarify the dentist's requirements as to child and parental behaviour during the discussion of care.

Discussing behaviour management with patients and parents:

Many of the surveys indicate that the behaviour management or behaviour guidance techniques and pharmacological interventions may not be a part of informed consent for many dental professionals, although pediatric dentists in particular appear much more attentive to this issue than general practitioners. Some of the procedures that include tell-show-do, nonverbal communications, positive reinforcement, and voice control might be benign and implicit to ordinary human interactions that may not require. Other behaviour guidance/management procedures would be controversial, and failing to discuss these is a red flag in itself, for malpractice. Especially discussing questionable behaviour management/guidance techniques as well as possible pharmacological alternatives, and their costs all fall under informed consent.

HOMAR – Hand over mouth with airway restriction is one of the techniques some of the parents may find questionable. An obvious alternative to HOMAR technique is use of General Anaesthesia and Conscious Sedation.

For the treatment under general anaesthesia, a standard of care is required along with a special training, and a properly equipped setup.

Both of the above-mentioned techniques require a proper informed

consent (preferably written) of the parent/guardian in order to carry out the procedure.

Maintenance of records:^{14,15}

The dental record, also referred to as the patient's chart, is the official office document that records all of treatment done and all patient-related communications that occur in the dental office. The dental records are important as it provides for continuity of care for the patient and also is critical in the event of a malpractice insurance claim. Most dentists prefer making notes in paper dental records as they find it more convenient. Generally, patient records are housed in file folders for protection. These files are labelled with the following information (in the following order):

- Patient's surname followed by first name; middle name; and Patient's degree or seniority.

The information mentioned should primarily be clinical in nature. All the basic information should be clearly written, not containing many abbreviations in registration form. The dental team should be punctual, meticulous, and thorough in dental office record keeping tasks. The record should be updated with sign and date by the person entering the new information. The identity of the practitioner rendering the treatment should be clearly

noted and mentioned in the record, in practices with more than one dental practitioner.

Reference cases:

- 1) Bharat Shastri v. Dr. Anand Krishnamurthy

Court: National Consumer Disputes Redressal Commission

- 2) Aparna Aggarwal alias Anjali Singla v. Dr. Ankur Sabharwal

Court: District Consumer Disputes Redressal Commission

To-do list for the dentist to avoid litigation¹⁴

1. Avail the services of a good lawyer.
2. Timely filling of the written statement, reply and all legal documents as required.
3. Proper maintenance of case history of his/her patient, all the clinical records preferably of all the appointments, agreements with doctors, Radiographs, laboratory test results (if any), etc. which will be of immense help in supporting doctor's claim.
4. Expert evidence of a qualified and independent professional should be

submitted. An affidavit of an expert can be filed as well.

5. Corroborative medical literature should be submitted.
6. Relevant case law on the subject will also be helpful.

Conclusion:

Mistakes happen in almost every profession, as it does in life. Unfortunately, in health profession sometimes even a minor mistake can lead to the serious consequences for the patient which in turn makes the respective medical/dental professional answerable. It is dentist's duty to carefully evaluate the patient, properly diagnose the case, inform the patient about possible risks and alternatives of the provisional treatment plan and then decide the treatment plan according to the convenience of the patient.

At any point of time dentist should not fail to maintain proper dental records of all the patients as they may serve as an important reference in case any legal issue arises. A complex legal maze is opened once the negligent lawsuit is filed against the dentist. The legal process and issues being difficult and distressing to navigate it is advised to avoid this when possible and also it can be stated that following the ethics is the key to successful practice.

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