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Medico - legal issues related to obstetrics

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Abstract

Gynaecology and obstetrics have huge importance in the medical field. Since it deals with maternal and child health. Obstetricians, like other practitioners of different specialities, have a legal accountability to provide a good standard of health care. However they have to provide health care to both mother and newborn. This may result in failure to provide adequate care.

A discontinuity of this care, due to wrong diagnosis, poor decision making, negligence, malpractice or intra-operative complications, unnecessary surgery, consent issues, poor supervision and due to human error such as retention of foreign bodies are common causes which could lead to litigation. So, it becomes essential that the obstetricians and gynaecologist must have adequate knowledge about the medico- legal aspects pertaining to their speciality.

Aim - The aim of this article is to discuss the important laws related to

obstetrics which are important for professional protection.

Objective – To create awareness about medico-legal and ethical considerations among the practitioners of obstetrics and gynaecology.

Key words – Obstetrics, Negligence, Litigation, Medico – Legal, Ethical

Introduction

Practicing in Medicine is one of the noble and most respected professions in the world. The Doctors are considered as saviours who rescue the endangered life of the patients.

The doctors have many ethical, moral and legal obligations while performing their duties. In recent past, the previous scenario that, common man respecting the doctor for recovery and blaming the god for death and damage is changing. Now a day people expect

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highest ethical standards from the practitioners. Therefore it is necessary that every practitioner should understand the nature of all such obligations. Also, they should possess knowledge about medico – legal cases, concern procedure and related legal provisions.

Usually we learn duties of physician while studying second year graduation. But, unfortunately no one pays attention to it until the problems like negligence case or case of compensation is filed against them. Obstetricians, like other practitioners of different specialities, have a legal accountability to provide a good standard of health care. However they have to provide health care to both mother and newborn. This may result in failure to provide adequate care.

This discontinuation of care may be due to wrong diagnosis, poor decision making, negligence, malpractice, intra-operative complications, and consent issues, poor supervision and human error such as retention of foreign bodies are the most common causes leading to various litigations. This article intends to outline the major causes of malpractice suit, causes of negligence and to analyze the various dimensions of ethical and legal issues, thereby guiding practitioners to understand the consequences and in so doing avoid alleged negligence.

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which are important for professional protection.

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Type of study – Descriptive and Conceptual study.

Literary review –

Code of medical ethics

According to the provisions of the Act no. MCI-211 (2)/2001/Registration read with section 33(m) of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India, with the previous approval of the Central Government, hereby made regulations related to professional conduct, etiquette and ethics for registered medical practitioners. These have been published in part III, section 4 of the Gazette of India dated 6th April 2002 ¹. These regulations include –

1. Code of medical ethics.
2. Duties of physicians to their patients.
3. Duties of physician in consultation.
4. Responsibilities of physicians to each other.
5. Duties of physician to public and to the paramedical profession.
6. Unethical acts.
7. Misconduct.
8. Punishment and disciplinary actions.

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Violation of this code of conduct by any registered medical practitioner would be liable to the charges of professional misconduct and if proved, he/she may either temporarily or permanently debarred from practicing medicine, it is sometimes termed “ the professional death sentence”.²

Laws related to consent³

Most of the times the cases registered have issues related to consent. So, it is essential that medical practitioner must have appropriate knowledge of laws related with consent. For medical procedure like examination, treatment, operation, diagnostic procedure or research on patient, consent should be obtained by a doctor.

1. Treating/examining a patient without consent is considered as an assault on patient (IPC 351).
2. While taking consent, if doctor fails to provide adequate information regarding disease, operation or treatment modality to the patient he may be charged for negligence.
3. Not taking consent is considered as deficiency in medical service under the section 2(1) of the Consumer Protection Act.

Consent not required

1. Emergency

2. Notifiable disease
3. Public health.
4. Prisoner.
5. The court order.

Consent of spouse

Preferably consent of spouse should be taken in following conditions

1. Termination of pregnancy.
2. Sterilization.
3. Artificial insemination.
4. Donation of sperm/semen.
5. Any operation that hampers sexual rights of the spouse.

In medico-legal cases of pregnancy, delivery and abortion the woman should not be examined without her written consent.

When consent has been obtained, the examination should, whenever possible, be made in the presence of a third person, preferably, a female nurse, especially while a male doctor is examining a female patient and vice versa. Under section 53(2), it has been stated that whenever a female is to be examined, the examination shall be made only by, or under the supervision of, a female registered medical practitioner⁴.

Emergency services and doctors⁵

1. The MCI regulations 2002 provide that it is responsibility of a doctor to attend the patient in an emergency and treat him accordingly.

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2. The doctor should not deny services to patient who is in need.

3. Section 92 of IPC offers legal immunity for doctors to proceed with treatment even without consent of the patient in an emergency condition.

Medical records and doctors⁶

Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment. Failure to maintain medical records for a period of three years or refuses to provide same within 72 hours to the patient or his authorized representative will lead to the professional misconduct.

Duties with regards to operation⁷

Doctors should explain the nature, extent and risk of operation and take consent of the patient. He should take proper care to avoid mistakes, use proper and sterilised instruments.

He should make sure that all swabs, instruments, etc. are removed. If any one of them remain inside the body, the surgeon can be charged with criminal negligence generally called as "*Res Ipsa Loquitur*" which means 'the things or facts speaks for itself'. He can be charged under section 304A IPC. So the instrument and swab count must be taken before and after surgery.

Misconduct⁸

The acts of commission and omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action. Some of them are as follows -

1. Improper association - Doctor should not associate or employ unqualified person to perform operation, treatment, etc. Performing or enabling unqualified person to perform an abortion or any illegal operation for which there is no medical, surgical or psychological indication.

2. Issuing false certificate – any registered practitioner who is shown to have signed or given under his name and authority any certificate, notification, report or document which is untrue, misleading or improper, is liable to have his name deleted from register.

3. Sex determination tests – on no account sex determination test shall be undertaken with the intent to terminate the life of a female foetus developing in her mother's womb, unless there are other absolute indications for termination of pregnancy as specified in MTP Act 1971.

4. No act of in vitro fertilization or artificial insemination shall be undertaken without the informed consent of the female patient and her spouse as well as donor.

5. The registered medical practitioner shall not refuse on religious ground alone to

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conduct of sterility, birth control, circumcision and MTP when there is medical indication, unless he feels himself/herself incompetent to do so.

6. Professional Secrets – The registered medical practitioner shall not disclose the secrets of a patient that have been learnt in the exercise of his/her profession except – in the court of law under orders of presiding judge, notifiable diseases and in circumstances where there is serious and identified risk to a specific person and or community.

Medical negligence

Medical negligence was previously called as malpractice. It is defined as absence of reasonable degree of care and skill or wilful negligence on the part of medical practitioner while treating a patient resulting in a bodily injury, ill health or death.⁹

An action for negligence in such cases may be brought against medical practitioner in a civil court (civil negligence) or in a criminal court (criminal negligence). The question of civil negligence arises, when a patient or in the event of his death his/her relatives, sue a doctor in civil court for compensation for the injury due to negligence of a doctor.

Similarly the doctor can bring a civil suit for realization of his fees from the patient or his relatives who refused to

pay the same on the ground of professional negligence.

The consequences of negligence are covered in India under the consumer protection act.

In case of serious injury to patient due to negligence, the doctor may be charged under sections 336, 337 or 338 IPC, in case of death of a patient he may be charged under section 304 A IPC¹⁰.

Examples of negligence¹¹

1. Brain damage in the newborn due to hypoxia from prolonged labour.
2. Failed sterilization by unsuccessful tubal ligation resulting in unwanted pregnancies.
3. Complications of hysterectomy such as ureteric ligation and vesicovaginal fistula.
4. Wrong blood transfusion.
5. Leaving instrument, tube, sponges, mops, swabs in abdomen.
6. Gross mismanagement of delivery of woman especially by a doctor under the influence of drinks or drugs.
7. Performing abortion without indication.
8. Foetal and maternal deaths by certain drugs.

How to avoid negligence¹²

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1. Rapport – healthy rapport and effective verbal communication should be maintained with patient and his family.

2. Rationale – the doctor should use all reliable and relevant information like history, examination, laboratory tests, etc. to make diagnosis and to formulate the treatment.

3. Records – the records should be carefully prepared, complete, accurate, relevant, timely and informative. Because, in a professional negligence trial, the record will be the most important evidence regardless of the facts and the standard of care practised

4. Remarks – Do not reprimand the patient and his family. Do not criticise any nurse or technician in front of patient.

5. Recipe – do not prescribe any medicine unless there is an appropriate therapeutic indication for it.

6. Respect – an attitude of care and concern, a relationship that suggests thoughtful professionalism and a humanistic approach many times solve problems.

7. Risks – the patient and his family must be informed of all anticipated risks while performing treatment or operation. Also he should be able to manage risks.

8. Review – Routinely review cases involving morbidity and mortality. Review

medical malpractice cases and the testimony by medical experts.

Duties of doctors in criminal abortion¹³

When a female comes to a registered medical practitioner with history of criminal abortion or attempted criminal abortion, then

1. Doctor should record the history of incident, the method adopted to procure the abortion and he should treat her to best of his abilities.

2. If death is eminent, he must arrange for dying declaration by informing the nearest magistrate.

3. If patient is seriously ill the police should be informed.

4. He should refuse to issue a death certificate if she dies and report the matter to police.

Discussion and conclusion

Most of the medico-legal issues in obstetric practice are concerned with consent issues, emergency services, medical records, *Res Ipsa Loquitar*, misconduct and negligence. These can be easily avoided by taking written informed consent, effective verbal communication with patient and his family, proper data recording, appropriate risk management. Also, one should always keep in mind that all the laws of procedure are suspended

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when a doctor attends a patient in an emergency so one should not be hesitate to attend and treat emergency and at risk patient.

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