

DUTIES OF PATIENT

- ◆ Provide all information

- ◆ Must cooperate

- ◆ Carry out all instructions

Free from responsibility of treatment

- ◆ Pay the practitioner

Doctor can sue the patient

PROFESSIONAL NEGLIGENCE

- ◆ Civil negligence - compensation
- ◆ Criminal negligence - serious injury or death
- ◆ Contributory negligence - concurrent
- ◆ Corporate negligence - institutional
- ◆ Vicarious responsibility

PROFESSIONAL NEGLIGENCE

- ◆ OMISSION TO DO SOME THING WHICH
A REASONABLE DOCTOR WOULD DO

Act of omission

- ◆ COMMISSION OF SOME THING WHICH
A REASONABLE DOCTOR WOULD NOT
DO

Act of commission

PROFESSIONAL MALPRACTICE

- ◆ Lack of reasonable care and skill
- ◆ Willful negligence on the part of practitioner
- ◆ Health or life of patient endangered
- ◆ Not mere neglect or carelessness where there is legal duty
- ◆ Failure in this duty caused damage/injury

PROFESSIONAL MALPRACTICE

- ◆ Diminishes chances of recovery
- ◆ Prolongs illness or increases sufferings
- ◆ Death
- ◆ If no damage no compensation even if doctor is negligent
- ◆ Average degree of skill
 - General or specialist
- ◆ Error in diagnosis no negligence

DAMAGE

- ◆ Physical
- ◆ Mental
- ◆ Financial
- ◆ Pain and sufferings

DAMAGES

- ◆ Assessed by court
- ◆ Loss of earning power future and present
- ◆ Actual cost
- ◆ Reduction in quality of life

MUST ESTABLISH TO COURT

- ◆ Doctor owed him a duty
- ◆ Derelict and breached duty
- ◆ Suffered actual damage
- ◆ Doctor's conduct direct cause of damage

Patient can prove this –awarded damages

RES IPSA LOQUITAR

Doctor considered innocent except

- ◆ Without negligence injury does not occur
- ◆ Plaintiff did not contribute to own injury
- ◆ Doctor exclusive control of instrumentalities

Doctor has to establish innocence rather than patient has to prove doctor's guilt

RES IPSA LOQUITAR

- ◆ Foreign bodies or instruments
- ◆ Burns from heating modalities
- ◆ Injury to body part outside field of treatment
- ◆ Prescription of toxic drugs

CASE BROUGHT IN

- ◆ In Civil courts
- ◆ In Criminal courts
- ◆ Consumer courts
- ◆ Medical Council

CIVIL NEGLIGENCE

- ◆ Sue in civil court for compensation due to negligence of doctor in case of damage or death of patient
- ◆ Patient refuse to pay fee on grounds of negligence

FAILURE IN CONTRACTUAL OBLIGATION

- ◆ When doctor agreed to treat person
- ◆ Burden to prove lies with patient
- ◆ Want of competent care and skill
- ◆ Leads to bad results

DIAGNOSIS

- ◆ Failure to x-ray in cases of fractures or injury to joints
- ◆ Failure to use ophthalmoscope
- ◆ Failure to refer
- ◆ Failure to consult specialist

TREATMENT

- ◆ Care while using dangerous drugs
- ◆ Excessive exposure to radiation

CRIMINAL NEGLIGENCE

- ◆ Death or serious injury due to negligence
- ◆ Undue interference in the treatment
- ◆ Death-
 - Gross ignorance, gross carelessness, rash or negligent act 304-A IPC
 - Drunkenness or use of drugs
 - Serious injury 336, 337 or 338 IPC

CRIMINAL NEGLIGENCE

- ◆ Gross negligence during
 - Treatment, anesthesia, operation or postoperative
- ◆ Not doing sensitivity test when needed
- ◆ Injecting basal anesthesia in fatal dosage or wrong tissue
- ◆ Amputation of wrong finger or limb

CRIMINAL NEGLIGENCE

- ◆ Removal of wrong organ
- ◆ Errors in ligation of ducts
- ◆ Operation on wrong patient
- ◆ Leaving instruments or sponges
- ◆ Leaving tourniquets too long

CRIMINAL NEGLIGENCE

- ◆ Giving wrong or infected blood
- ◆ Gangrene after too tight plaster
- ◆ Dressing with corrosives
- ◆ Performing Criminal abortion
- ◆ Performing criminal operation
- ◆ Mismanagement of delivery under influence of drugs or alcohol

CONTRIBUTORY NEGLIGENCE

- ◆ Simultaneous negligence by the patient and doctor and there is harm or delayed recovery of patient
- ◆ If contributory negligence patient loses right for compensation totally or partially
- ◆ Doctor should foresee and warn patient

CONTRIBUTORY NEGLIGENCE

- ◆ Without warning no pleading of contributory negligence
- ◆ Good defence for doctor
- ◆ Burden of proving CN with doctor
 - Did not give correct history
 - Did not follow instructions
 - Patient to blame himself for his condition

CARPORATE NEGLIGENCE & VICARIOUS RESPONSIBILITY

- ◆ Liability exists in the absence of blameworthy conduct on the part of master
- ◆ Master/hospital management responsible for negligent acts of his servants within scope of employment - interns, junior residents and non medical staff but not for consultants

VICARIOUS RESPONSIBILITY

- ◆ Hospital management not responsible for senior staff if they exercised due care in selecting them
- ◆ Physician responsible for interns and junior residents if act carried out under his supervision
- ◆ Negligent choice in referring- physician responsible

PRECAUTIONS AGAINST NEGLIGENCE

- ◆ Diagnosis should be confirmed by laboratory tests
- ◆ X-ray routine in cases of injuries to bones or joints
- ◆ Consultations
- ◆ Immunization considered wherever required
- ◆ Sensitivity tests performed

PRECAUTIONS AGAINST NEGLIGENCE

- ◆ Drugs checked before administration
- ◆ No experimentation without prior consent
- ◆ No procedure beyond competence
- ◆ Meticulous record keeping of all being done on the patient, preserved for three years
- ◆ Informed intelligent written consent taken

PRECAUTIONS AGAINST NEGLIGENCE

- ◆ Take an undertaking from patient that test reports and x-ray films have been handed over to him
- ◆ Keep a record of all treatment and investigations even of OPD treatment
- ◆ Doctor's are protected under Section 80 IPC as they are doing the lawful act for the benefit of the patient with consent and Sec 92 IPC when without consent.

DOCTOR'S INDEMNITY INSURANCE

- ◆ Whenever charge of negligence inform the society or insurance company
- ◆ Should not express regrets in such cases as it may considered admission of liability
- ◆ Has to pay premium but keeps free from tensions

DOCTOR'S INDEMNITY INSURANCE

- ◆ He should inform the court that he is insured and submit copy of the insurance policy so that insurance company can made a party
- ◆ Sometimes advocate of insurance company does not know about medical facts, should brief him and keep a tab on proceedings and better to have your own advocate also

PRACTITIONER & PATIENT

- ◆ When a patient comes to doctor -Implied contract – doctor patient relationship
- ◆ Doctor patient relationship not in cases:
 - In an emergency
 - Pre-employment checkup
 - Court orders for examination of accused
 - Request of attorney for law suit purposes

CONTINUE TO TREAT UNLESS

- ◆ Patient is well
- ◆ Under other responsible care
- ◆ Given notice by doctor
- ◆ Intention of changing the doctor
- ◆ Patient not cooperating
- ◆ Patient does not pay fees
- ◆ Consults another doctor without permission
- ◆ Disease is feigned

REASONABLE CARE

- ◆ Use proper and clean appliances
- ◆ Furnish suitable medicines or legible prescriptions
- ◆ Full directions in simple language
- ◆ Suggest consultations
- ◆ Warning patient, spouse family employer- if he is danger to himself or to others AIDS, epilepsy

CONSULTATIONS

- ◆ Obscure and difficult case
- ◆ Diagnosis in doubt
- ◆ Case takes a serious turn
- ◆ Operation dangerous to life
- ◆ Case of criminal assault
- ◆ Affect intellectual or reproductive function
- ◆ Termination of pregnancy over 12 weeks

CONSULTATIONS

- ◆ Criminal abortion
- ◆ Destructive operation of unborn child
- ◆ Suspicion of poisoning or criminal act
- ◆ Apprehensive or neurotic patient- full disclosure not possible and no person to get consent
- ◆ Do not resuscitate orders to be issued
- ◆ Dowry deaths – post mortem cases

REASONABLE SKILL

- ◆ Average degree of skill
- ◆ Not responsible for error of judgement
- ◆ Reasonable skill and knowledge
- ◆ Adopt any theory in which he believes
- ◆ No experiment without consent
- ◆ Specialist: special degree of skill and knowledge and current knowledge

PROFESSIONAL SECRECY

- ◆ Professional secret is the secret which a doctor comes to know about the patient during his practice in his professional capacity
- ◆ Should not divulge it
 - Unethical and illegal
 - Liable to damages for divulging it

PRIVILEGED COMMUNICATIONS

- ◆ When a doctor is justified to make this communication
- ◆ It is a communication made by a doctor to a proper authority who has corresponding legal, social and moral duties to protect the public
- ◆ It must be sealed and labeled privileged communication

PRIVILEGED COMMUNICATIONS

- ◆ In a court of law
- ◆ Moral or social duty
- ◆ In doctor's own interest
- ◆ Assist in apprehension of criminals
- ◆ In certain other cases
 - Servant sent by master
 - Insurance purposes

IN A COURT OF LAW

- ◆ If judge rules: doctor must disclose this information otherwise it will be contempt of court
- ◆ Doctor can write this information and hand over to the judge

MORAL OR SOCIAL DUTY

- ◆ Bar maid open tuberculosis
- ◆ Hotel waiter has typhoid
- ◆ Hypertension or epilepsy in bus driver
- ◆ Colour blindness in engine driver
- ◆ Communicable diseased person entering swimming bath
- ◆ Partners of AIDS patient
- ◆ Tendency to commit violent crimes

In doctor's own interest

- ◆ Must notify births, deaths, communicable diseases, food poisoning or contamination of drinking water.
- ◆ Must notify cases of homicidal poisoning and others if death likely to police
- ◆ If in govt. job notify all types of poisoning to police

Assist in apprehension of criminals

- ◆ If called to treat victim or accused of serious crimes like robbery or murder etc (Section 39 CrPC)
- ◆ Criminal abortion
- ◆ Person dies after attempted suicide

IN CERTAIN OTHER CASES

- ◆ When a servant sent by master
- ◆ Insurance reports
- ◆ Inquiries

When a servant sent by master

- ◆ Affect capacity of work
- ◆ Confined to those matters which may affect the work
 - Fitness to work
 - Necessity for leave
 - Extent of disability
- ◆ When a worker claims compensation

INSURANCE REPORTS

◆ Can write anything found on examination to insurance company

◆ Cannot write with his previous knowledge about the patient but better to refuse examination by reason of previous knowledge

INQUIRIES

- ◆ Should not answer queries by
 - Insurance companies, solicitors or any body else without the consent of the patient
 - Parents and relatives
 - Cause of death without the consent of nearest surviving relative

EUTHANASIA

- ◆ Mercy killing
- ◆ Putting a person to painless death in cases of incurable sufferings or when life is purposeless as a result of mental or physical handicap

EUTHANASIA

- ◆ At birth
- ◆ At terminal stages
- ◆ Severely impaired as a result of brain damage