



## Case Report

# Medico legal perspective in dentistry

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### ABSTRACT

“Prevention is indeed better than cure”. The base of the relationship between a doctor and his patient is built on trust and confidence. In today’s world we witness a rapidly increasing pace of globalization and commercialization in every field and medical profession is no exception. The medical profession has also been influenced due to the pressure created by globalization and liberalization. However, nowadays people are aware about their rights and laws of consumer protection. Medical profession is considered to be a noble profession as it helps in preserving and saving lives. Carelessness and negligence are not expected from healthcare professionals. They are expected to provide the best treatment with their complete knowledge and skills. This article provides an overview on ethics in dentistry, rights and duties of healthcare professionals and also about the medico legal issues related to dentistry.

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## 1. Introduction

As quoted by Benjamin Franklin “An investment in knowledge pays the best interest”. In today’s rapidly growing world, people are becoming more and more aware about their surroundings. Hence, awareness about medical and dental negligence among people is also growing. With this scenario, the health care professionals have to be more careful and impeccable in the treatment which they are providing to their patients or else they may have to face legal tangles, which is intangible and disturbing sometimes. Dentists are increasingly facing legal threats from the patients who are not satisfied by the treatment given. Hence it is imperative that all the health care professionals including dentists should be familiar of the medico legal aspects of the field.

### 1.1. What is Negligence?<sup>1</sup>

Negligence means lack of reasonable care and skill or wilful negligence on the part of a doctor in the treatment of a

patient whereby health or life of the patient is endangered.

There is a failure of healthcare professional to meet his or her responsibility to a patient, with resultant injury to the patient.

In order for achieving success in an action for negligence consumer must be able to establish to the satisfaction of the court that:<sup>2</sup>

1. Duty owed by the doctor to him to confirm the particular standard of professional conduct.
2. There is breach of duty.
3. Patient has suffered actual damage.
4. Doctor’s conduct was direct or proximate cause of damage, suffer damage or injuries.

Dental professionals are legally liable for their own negligence or can be held liable for negligence of others of which they have knowledge but fail to report or intercede.

The Supreme Court also consider that in conditions of health profession, negligence have to be observed at a different angle. Additional contemplation has to be put in to infer negligence on the part of professionals, in particular healthcare professionals like doctor and dentist. Lack of

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care, or an accident, is not proof of negligence on part of the health professional. If a health care professional follows a practice acceptable to the profession of that day in the region, she/he cannot be held liable for negligence simply because another alternative course or method of treatment was also available.

### 1.2. Non- Negligent Acts

1. Not obtaining a consent form in an emergency.
2. Patient's dissatisfaction with progress of treatment cannot be considered as an act of negligence.
3. Not getting desired relief.
4. Charging, what the patient thinks is exorbitant cannot be considered negligence.
5. When patient does not follow advice of the doctor and does not get satisfactory results, dentist cannot be held negligent.
6. Giving preference of one patient over the other based on priority.

Professional may be held liable for negligence on either of the findings:

1) Either he/she was not possessed of the requisite skill which he/she pretended to have possessed or

2) He /she did not exercise with reasonable competence in the given case, the skill which he/she possessed.

- The liability is on the patient to prove not only that they are a victim of negligence but that they have also agonized damage in the procedure.

- A Foreign Body like Amalgam in tooth sockets, broken RC instruments, bur tips in bone can invite negligence allegations as can accidental ingestion of crowns or dental instruments etc.

- Also in a case of cardiac arrest, the dentist must remain with the patient and try for resuscitation.

### 1.3. Liabilities a Doctor can be held liable for:<sup>3</sup>

1. Tortious liability: Liability incurred when one party owed a duty to another and failed to reasonably exercise a duty. For example, removal of a wrong tooth.
2. Vicariously liability: In this type, the liability arises when the law holds one person responsible for the harmful acts of another, even if the person has nothing to do with the commission of tort. For example, a dentist practicing in a hospital provides a wrong line of treatment to a patient. Hence, as a case of tortious liability against the dentist and vicarious liability against the hospital will be considered.
3. Res ipsa loquitur: Latin meaning- the thing speaks for itself. This particular phrase is used when it is obvious that the negligent act of the defendant has caused the damage alleged. For example, detachment of needle from syringe and slippage into throat.

4. Statutory liability: It depends on infringement of certain statutory duties that a clinical establishment has to provide towards the patient and staff. Ex: Running a dental practice without a proper license.

5. Contributory liability: Means the failure by a person to use reasonable care for the safety of himself or herself so that he or she becomes blame worthy In part as an offender. For example, a surgical procedure performed on a diabetic patient without the proper blood sugar test.

6. Criminal liability: When the medical man exhibits a gross lack of competence or in action. The following are the important offences that invite criminal liability with regard to negligence.

- Section 304A Indian Penal Code (Sec 304 A IPC) – Negligent homicide. This includes a rash or negligent act that results in death, e.g. death on the dental chair.
- Sec 336 (IPC) – this implies to any act endangering the life of a person (even if there is no injury), e.g. performing dental surgery without antibiotic prophylaxis for a patient who has valvular heart disease (even if the patient does not develop endocarditis).
- Sec 337 (IPC) – This includes any negligent act causing simple injury, e.g. swelling after negligent extraction.
- Sec 338 (IPC) - Any negligent act resulting in grievous injury, e.g. jaw fracture due to improper force during extraction.

### 1.4. Ethics<sup>4,5</sup>

Ethics is defined as the part of philosophy that deals with moral conduct and judgment.

Dental ethics implies righteous duties and obligations of the dentist towards his patients, professional companion and to the society.

### 1.5. Code of Ethics

In exercise of the powers conferred by section 17A of the Dentists Act, 1948 (16 of 1948), the Dental Council of India hereby makes the following regulations for laying down standards of professional conduct and etiquette or the code of ethics for dentist.

### 1.6. Declaration

Every Dentist who has been registered (either on Part A or Part B of the State Dentists Register) shall, within a period of thirty days from the date of commencement of these regulations, and every dentist who gets himself registered after the commencement of these regulations shall, within a period of thirty days from such registration, make, before the Registrar of the State Dental Council a declaration in the form set out for the purpose in the Schedule to these

regulations and shall agree to abide by the same.

### 1.7. Principles of Ethics

1. To do no harm (non-maleficence)
2. To do good (beneficence)
3. Respect for person
4. Justice
5. Trustfulness
6. Confidentiality

### 1.8. Prevention against Negligence<sup>6</sup>

1. Only the written records prove health care professionals innocence when something goes wrong.
2. Good communication: All information must be explained in comprehensible nonmedical terms, preferably in patient's local languages about the diagnosis, nature of treatment, risk involved, prospects of success, prognosis if the procedure is not performed and alternative methods of treatment.
3. Never forget to take the appropriate type of consent whenever indicated. Take informed consent if any invasive dental procedure and/or local anesthetic agent is being used; preferably in the local language or in the language patient can read.
4. When a patient refuses to consent for a treatment which the doctor feels necessary, an informed refusal of the consent must be taken in written format from the patient, in the presence of some independent witness and to be authenticated. The refusal consent should be obtained after fully explaining to the patient/ relatives the risk and consequences of refusal of procedure.
5. Maintain proper records of your professional work for a minimum of 3 years (for adult patients), for child patient (18+3) years.
6. Have a professional indemnity insurance of appropriate value and ensure its timely renewal.
7. Respect the patient, treat the patient like you would want yourself treated.
8. Never guarantee a result.
9. Act within the legal limits. The laws, rules and regulation of our profession should be known and not to be violated.
10. Know the legal provisions in favour of medical profession. Defamation is dealt by IPC section and it can be used to counter malicious charges by patients intending to spoil the good name of the doctor.
11. Should not do any harm to your patient.
12. The code of conduct and Dental ethics in letter and in spirit to be followed.
13. Maintain confidentiality.

## 2. Conclusion

We should perceive that, the purpose of medicine is "do no harm", hence while healing we should not harm the patient. As the perception of people in today's developing world is increasing, people are becoming more and more aware of things; they are changing their attitude towards dental procedures. There is a necessity for preserving the records officially and professionally to defend against any commercial, legal and medico-legal litigation. Records are the main factors needed to persuade in the lawsuit. Written records including dental and medical history, photographs, radiographs, chart notes and models are the only accessible guidelines from which to deliberate in a negligent lawsuit and must be carefully kept.<sup>7</sup> Compensation and punishments to civil wrong and criminal act, respectively, try to reimpose peace but ethics if performed in consistency and correct intent can aid society in a better way.

## 3. Source of Funding

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## 4. Conflict of Interest

None.

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