

Forensic Psychiatry

Consumer Protection Act - Blessing or Curse to Medical Profession ?

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Introduction

With the increasing commercialisation of all spheres of life, all the professions have come under the public scrutiny. Earlier the role and the service provided by the medical professional was considered noble and charitable. But today with the increase in medical negligence and malpractices this profession is looked upon with doubt and contempt. The deterioration in the standard of patient care is considered to be due to interest in the monetary gains. And more ever patients have become more aware of their rights and there have been increase in the number of complaints against doctors in the consumer forums which are available in our country for redressal of their grievances. All these have soured the patient-doctor relationship to great extent.

The Consumer Protection Act was passed in 24th December, 1986 for the better protection of the interest of consumers and to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer's dispute and for matters connected therewith.¹⁻⁴

Till 1995, even courts were not clear whether doctors are covered under consumer protection act or no. In a landmark case in 1995, the Supreme Court decision in **Indian Medical Association vs**

VP Shantha,⁵ medical profession has been brought under the Section 2(1) (o) of Consumer Protection Act, 1986 and also, it has included the following categories of doctors/hospitals under this Section:

1. All medical/dental practitioners doing independent medical/dental practice unless rendering only free service.
2. Private hospitals charging all patients.
3. All hospitals having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals.
4. Medical/dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee.

The medical profession has also been included within the ambit of a 'service' as defined in the Consumer Protection Act; 1986. This defined the **relationship between patients and medical professionals as contractual and not a master-servant relationship** as argued by the medical professionals. Patients who had sustained injuries in the course of treatment can now sue doctors in consumer protection courts for compensation.

As per the Consumer Protection Rules, 1987, a complaint filed in the Consumer Forum/

Commission shall be decided within a period of 90 days from the date of notice by opposite party and within 150 days if it requires analysis or testing of commodities.

The maximum time limit for a claim to be filed under CPA is 2 years from the date of occurrence of the cause of action. There are no court fees to be paid to file a complaint in a Consumer Forum / Commission. Further, a complainant/opposite party can present his case on his own without the help of a lawyer.

The courts have great responsibility to punish the guilty doctors and at the same time to protect the honest doctors from undue harassment at the hands of patients.

The structure of the consumer forums/commission: It depends upon the amount of compensation and decided by the government from time to time

1. District consumer redressal forum
2. State consumer redressal forum
3. National consumer redressal forum
4. Supreme court: final appeal

To avoid litigation medical professional can use various preventive measures:

1. Personal level
2. Practice level.
3. Professional indemnity
4. Support groups
5. Defences
 - a. Technical.
 - b. Factual.

Personal level

A doctor should have M.C.I. approved qualification, training and experience of recognized centres. The prescription heads, signboards and advertisements should mention the actual facilities available for diagnosis and treatment. The doctor should have a sympathetic attitude towards patients and answer all queries without losing temper. He should refrain from claims of guarantee of results. He should keep himself updated of the latest development by attending CME's, workshops and academic sessions.

Practice level

The doctor should exercise reasonable medical, social and legal skill and care in diagnosis and treatment, proper documentation of facts and legally valid informed consent. This can be done by making

good clinical notes of findings on examination and treatment given. Where there is failure to follow instruction, refusal for any investigation and failure to come for review on specified date should always be recorded in underlined way. These negative records act as important tool while defending our cases in court of law.

Professional indemnity

Indemnity by the insurance companies gives a sense of mental security to the doctor/hospital and if any medical negligence is proved the company takes care of it.

Support groups

By forming societies like the Indian Medical Association, Medical college teachers Welfare Society, doctors not only get a type of social security but regular fellowship will prohibit the doctors speaking foul against their own colleague. Such forums can be used from time to time for discussion of various provisions of acts, cases fought and their results and the lessons to be learned from them.

Defences

Doctors/Hospitals should always make all possible points in defence in first instance of making a reply to the complainant.

A. Technical Defences

1. The medical service rendered was free of charge (now, this is applicable in certain situations only).
2. Concurrent adjudication in another court.
3. The court does not have pecuniary/territorial jurisdiction.
4. Complaint is time-barred.
5. Complicate issues involved, required recording of evidence of experts, hence case should be relegated to a civil court. Such a plea must be taken at the beginning of the trial.
6. The complaints frivolous and vexatious and liable to be dismissed under section 26 of the Act.
7. Inform your insurance company in writing with a copy of the complaint.

B. Factual defences

1. Mention your qualifications, training, experience, expertise etc. Support with relevant documents.

2. Mention hospitals infrastructure facilities, special facilities, back-up support, it with documents.
3. Complainant has not come to the court with clean hands i.e. he has suppressed material facts, e.g. previous illness, treatment etc.
4. Inconsistence between notices sent directly or through consumer groups and the complaint made in the court.
5. Written evidence of consent of the patient/relative/attendant to assumption of inherent and special risks in the treatment.
6. Circumstances of the case; viz. There was emergency, lack of facilities (e.g. rural area) no one to give history of patient's illness etc.
7. Burden of proof of: (i) duty of care; (ii) breach of that duty; (iii) causation; (iv) damage, etc. is on the complainant.
8. Reasonable knowledge, skill and care exercised (Rely/quote standard text books with attested photocopies).
9. Consolation/treatment by patient from other doctor/other systems of medicine simultaneously.
10. Many other reasons/more than one reason/for occurrence of damage.
11. Contributory negligence.

The 'Bolam' test in Bolam vs. Frien hospital management committee (1957)

Mr. Bolam was advised electro convulsive therapy for mental illness. He was however, not warned of the risks of fractures involved in the treatment. There were two bodies of opinion. One preferred the use of relaxant drugs. Using relaxants, the patient sustained dislocation of both hip joints with fracture of pelvis. The supreme court held that the doctor was not negligent because he acted in accordance with practice accepted as proper by a responsible body of medical men skilled in that art.

The 'Bolam' principle implies that a doctor is not negligent if he acts in accordance with a practice accepted at the time as proper in diagnosis and treatment but also to advice and warning by a "responsible body" of medical opinion even though other doctors adopt a different practice. A doctor is not liable for taking one choice out of two for favouring one line of treatment rather than another.

Some interesting cases

Tarun Kumar Pramanik vs. Dr. Kunal Chakraborty & Ors, 1995(2) CPR 545(WE SCDRC)

The complainant alleged that during operation for left inguinal hernia his left testis was removed negligently and without consent. On account of this suffered and has become handicapped. The State Commission on the basis of evidence placed on record, and opinion of expert witness held that the removal of testis was done of expert witness held that the removal of testis was done to avoid gangrenous infection, operation was done with reasonable care and skill and had not resulted in any handicap. Complainant was held to be vexatious and complainant liable to pay cost of 1st opposite party.

Jayantilal Govindalal Parmar vs. Managing Trustee & Ors. (1997 (1) CPJ 295 : 1997 (2) CPR 9 (Gujarat SCDRC)

The complainant was operated for gallstones but subsequently he developed stricture near the bulbous urethra due to which he could not enjoy sex and could not pass urine easily. He ultimately had to be operated at a Urological Hospital for relief and heavy amount had to be spent due to negligent performance of his first operation. The State Commission observed as under and the complaint was dismissed. There is absolutely no evidence to establish that there was any negligence on the part of the opponent in performing the operation on July 30,1992 and that it was a result of such negligence that second operation became necessary. Connection between the two operations has not been established. There is no certificate of the doctor of the urological hospital at Nadiad wherein it is alleged to have been stated that the second operation became necessary on account of the first operation on record. In the absence of any expert evidence, we cannot hold the opponent who has stated that he had performed the operation on the complainant carefully and that the complainant had not complained of pain when he was discharged from the hospital and thereafter. There is also some force in the opponent's submissions that if the complainant was suffering from intense pain as alleged by him, he would not have waited for seven months to consult Dr. Rajguru. There is nothing in the documentary evidence placed on record, which would support the allegations made by the complainant.

The complaint dismissed without costs.

C.J. Lawrence vs. Apollo Hospitals (Tamilnadu SCDRC O.P. No. 8/94 Decided on 05.08.1998).

The complainant was admitted in a private hospital for pain in the neck on the right shoulder. Investigations revealed that he was a diabetic and had right hydronephrosis with obstruction at right ureterovesical junction. The complainant underwent surgery by retroperitoneal approach. The affected portion of the ureter was removed and uretric reimplantation was done. During the postoperative period, the complainant developed high fever and further investigations showed that a stapler pin was seen in the gastrointestinal tract. The complainant got discharged against medical advice. The allegation was that the pin was left there during the operation. The surgeon stated that the surgical staplers are V or U shaped and used in clusters in surgeries involving large intestine. The stapler pin seen in the x-ray is not a stapler pin. It resembles the stapler pins used in food pockets. Evidently, this stapler pin should have been swallowed. The State Commission held that there is no negligence or deficiency of service on the part of the hospital and dismissed the complaint without costs.

C. Sivakumar vs. Dr. Jalin Arthur & Anr, 1998 (3) CPR 436(TN SCORC)

The complainant, a 23 years old boy approached Dr. John for blockage in passage or urine (phimotic penis) who took him another clinic for operation. After the operation there was over-bleeding from the penis and ultimately he had to be admitted to Jipmer Hospital. The hospital authorities reported the matter to the police. Here he came to know that his penis had been cut off (amputated) and only a small stump had been left, and he was passing urine only through an artificial hole made at Jipmer Hospital. He, in the process, had become permanently impotent.

Compensation of Rs.8lakhs was awarded to be paid by the first opposite party.

TMT. Chandra vs. Mahesh & others, 2000 (1) CPJ. 361:2000(2) CPR: 2001 CCJ 1363(TN SCDRC)

The complainant's husband had undergone two surgeries for lump on body after proper clinical examination. After the first surgery the lump was diagnosed as lymphoma but during the course of treatment after surgery it was suspected to be neurofibroma and excision biopsy was done and

the biopsy report revealed to be cancerous. He was advised radiotherapy and chemotherapy. She argued that the doctors were negligent and the surgeries were done in hurry. Subsequently the patient expired. She consulted doctors of the cancer institute Adyar, Tamil Nadu and CMC, Vellore who opined that the patient expired due to the negligent behaviour of the operating doctors, but no document certifying the above claim was issued. Hence the complaint did not receive any compensation.

P. Sudhakar Vs. Gowri Gopal Hospital, 2004 (1) CPJ 329 (AP SCDRC)

Surgery was done for acute appendicitis, during the post operative period the patient expired after administration of wrong drug "Fancuran Bromide , 2ml ,mistaking it for analgesic. As compensation Rs. 2 lac was awarded along with Rs.10,000 as costs for OP-hospital, doctor and nurse were held jointly liable.

Conclusion

Hence after the consumer protection act has included the medical professional in its ambit it has proved to be double-edged sword for a doctor. Only proper and ethical judgement , precautions and proper documentation of all facts of the patient details, diagnostic tests and treatment given and informed consent from the patient or his guardian can save a doctor against any litigation. A doctor should give more importance to excellence in the treatment and patient care and not to the rapid globalisation and commercialisation which have engulfed our society today.

References

1. Reddy KSN. Medical laws and ethics. The essentials of Forensic Medicine and Toxicology. K. Suguna Devi, Hyderabad, 28th Edn. 2009 : 49-50.
2. Consumer Protection Act and Medical profession [online] [2009?] [cited 2009 Sep 26]. Available from URL <http://www.medindia.net/doctors/cpa/CPA.asp>
3. Prakash C, Roy Chaudhary SK, Bala R, Shrivastav B, Rai A, Roham. Consumer Protection Act (CPA/ COPRA) Related to Medical Profession. JIAFM 2007; 29(3) : 39-41.
4. Surgery [online] [2009?] [cited 2009 Sep 26]. Available from URL <http://www.aiclindia/caseclassified/Surgery.asp>
5. Indian Medical Association vs. VP Shantha AIR 1996 SC 550 : (1995) 6 SCC 651.