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Review Article

Newer implications of medico-legal and consent issues in plastic surgery

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ABSTRACT

The social impact of entire cadre of medical graduates admitted through donation and management seats is yet to arrive. What has arrived are the burdens of complying with various acts and facing legal challengesduring medical practice. This article deals with some recent legal requirements for catering to plastic and cosmetic surgery patients.

KEY WORDS

Consent; Medical Visa; indemnity insurance; CPA

MEDICAL PRACTICE IN TODAY'S SCENARIO

Two major inclusions, that of Consumer Protection Act and that of service tax definitions, have converted the physicians from Nobel professionals to mere service providers. We are now a business enterprise more and healers less. With such an outlook from law and society, entire medical fraternity is facing very tough time because of growing number of cases. This trend is disturbing doctors who want to practice honestly and ethically. Since awareness of consumer rights has increased, and Implementation of the Consumer Protection Act became streamlined with several recent amendments, the litigations against doctors are increasing. There is probably increase and unregulated supply of some specialists in the medical field leading to growing competition and change in style of practice. Over supply, mode has happened for lawyers as well. It is a rampant practice to misguide a patient or the relatives. Violence against doctors has seen new dimensions, and this encourages others to follow. Laws against damage to property and personnel in health establishment are slow to come and get implemented. The electronic and print medial could really be utilized towards higher and precise message deliveries in health care very effectively. That is overpowered by yellow journalism and short-term monetary gains.

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Unethical and greedy attitude of some of our own colleagues has helped in deterioration of image of the medical profession in the society. Merit no longer remains the only criteria for getting admission in medical courses, and the far-reaching social impacts of such capitation fee churned medical graduates from India and overseas will soon be witnessed. The scene in some consulting rooms, where criticism of another doctor in front of the patient is perceived as heroic achievement. At the same time, all of us are drifting towards poor communication skills and pathetic record keeping.

The apex court has directed all registered medical practitioners to provide treatment to anyone who is

brought in emergency medical condition. The patients cannot be sent back on excuses. The lack of capacity to pay is never to be considered while stabilizing these emergency patients.

Some changes are on the horizon, and prominent amongst them is about the additional qualifications. It is known that prescription rights for (allopathic) medicines are available only to the person registered with a medial council or a dental council. Further to this extending certain specialized treatments or surgical care is also restricted to specialists in possession of such approved qualifications. Medical Council of India might take some more time to come out with a list of treatments and procedure that can be carried out by a particular super-specialist, but the list of privileges by National Accreditation Board for hospitals for several specialty departments of accredited hospitals is a welcome first step in this direction.

A recent Supreme Court Judgement in the case of one Miss. Samaira Kohli versus Dr. Prabha Manchanda (http://www.indiankanoon.org/doc/438423/) has provided some guidelines to of medical professionals. Here, the plaintiff, Miss. Samaira Kohli, an unmarried woman of 44 years of age, visited the clinic of Dr. D. Manchanda way back in 1995 complaining of prolonged menstrual bleeding. Dr. Manchanda carried out an examination and advised an ultrasound test be undertaken the same day. After examining the ultrasound, patient was asked to return the next day to undergo a laparoscopy under general anaesthesia, in order that a firm diagnosis can be arrived at.

Next day on May 10, 1995 when patient arrived for the laparoscopy she was made to sign various forms giving doctor and the clinic the right to carry out the procedure. The admission card recorded that the patient had been admitted "for diagnostic and operative laparoscopy". The consent form described the procedure as "diagnostic and operative laparoscopy. It was specified in the consent that a laparotomy may be needed"'. Patient was put under general anaesthesia and subjected to a laparoscopic examination. During the patient was unconscious, one of the assistants met with the mother of the patient, who had accompanied her to the clinic. The assistant sought the consent of the mother to perform a hysterectomy on patient. As the mother agreed, the uterus of the patient was removed. Later the patient sought damages for the loss of her reproductive organs, for irreversible, permanent damage, for pain, suffering emotional stress and trauma.

As per the judgement, where a patient's consent is taken for a diagnostic procedure or surgery, such consent cannot be categorized as permission to perform therapeutic surgery, whether conservative or radical, except in life-threatening situations. Furthermore, where a patient's consent is taken for a particular procedure, that consent cannot be used for an additional procedure.

In this case, the uterus removed on the ground that, it would be beneficial to her and was likely to avert future problems. As there was no imminent danger to the life or health of the patient, the consultant should not have proceeded without her consent. Consultant should have explained the benefits and risks of the procedure to the woman, the available alternatives to the recommended course of action, if any, and then taken informed consent.

PATIENT'S RESPONSIBILITY

It is patient's responsibility to ask about all details on the ailment and all possible modes of management. Later read and understand each and every word of the consent document, because once patient signs it the patient acknowledges that he understood everything written therein. Patient has to understand that patient cannot demand services beyond what are considered "acceptable" medical practice. Patient may face uncertainties during or after the proposed procedure. Furthermore, patient is responsible for her/his choices. Again the patient does have the right to accept, reject, think or discuss further, if patient so desires.

CONSENT

Ideal contents of the written consent as pointed out by the aforesaid judgement and from other indicators must be arrived at after full and fair explanation of the management or procedure. All potential risks and discomforts must have been narrated to the patient, but not in exaggerated manners of either direction. All anticipated benefits are properly spelled out and so also the complications and consequences. It is wise to enter the estimated payment requirements in the consent document, which than becomes a binding commitment for the patient. Privacy commitments may also be spelled along with their general and specific limits. Such releasing

information can specially mention usage of clinical and surgery photographs for academic purposes. Withdrawal from pre-decided line of management and consequences thereof may be specified in consent document.

International Standards for a Safe Practice of Anaesthesia have been referred to by Indian courts when the question of equipment and personnel "furnishing" ever arises. It will be in the interest of all surgical specialists who own such setups, to make sure that these requirements and recommendations are followed properly. Readers are advised to go through these details available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2957572/?tool=pubmed.[1] Some requirements are summarized in Tables 1 and 2.

PROFESSIONAL INDEMNITY INSURANCE

Readers are reminded that current professional indemnity insurance instrument available from any of the four General Insurance Company only applies to claims arising out of bodily injury and or death. The claims caused by or alleged to have been caused by errors, omission or negligence in rendered professional service by insured or named and qualified assistants are currently refused by these indemnity instruments. Another professional negligence - errors and omissions insurance policy is available for health care establishments and is usually sold as clubbed with policy for medical establishments' of late now there are many private instruments available for covering professional indemnity.

Table 1: Basic standards

International Standards for safe practice of anaesthesia — Basic Standards
Registered and qualified anaesthetist
Uninterrupted oxygen
Trolley and resuscitation equipments
Monitoring of pulse and colour
Light source
Stethoscope, Blood Pressur Monitor, thermometer
Cardioscope with defibrillators (rate and wave pattern)
Charting

WFSA: World Federation of Societies of Anaesthesiologists

Table 2: Desirable (essential for higher risk)

International Standards for safe practice of anaesthesia — Standards for high risk cases
Failure warning in trolley
Calibrated vaporiser (drug specific)
Pulse oximetry
Capnography, NIBP, airway pressure, neuromuscular, respiratory volume, oxygen concentrator

NIBP: Noninvasive blood pressure

Current professional indemnity instrument is directly copied from European instrument without any thought applied to it considering need of Indian medical professionals and their clinical work load as well as litigation load. Rates of premium decided by European precedence without ever looking at any primary Indian data. Even after several years of existence of this instrument no review has ever taken place on the rate of premium.

For the readers of this very specialty, it is worth noting that in the indemnity instrument a major exclusion is for the claims arising from the performance of cosmetic plastic surgery, hair transplants, punch grafts, flap rotations, and the like. Essentially therefore none of the beautifying or demand procedures are covered. None the less all must have more than one indemnity insurances available. In such indemnity insurance, the ration of limit for one event and that of the annual limit must be kept to one only. The geographical limits must be kept as a whole of India. There are special instruments for readers who travel overseas for clinical work. All facilities surgical and additional like, VASER, lasers etc., must be specified to the insurance company. It is also worth paying additional few hundred rupees for extra rider for unqualified employees. In addition indemnity instruments can be subscribing to any Professional Protection Scheme run by a state Indian Medical Association as well as National Professional Protection Scheme managed by Head Quarter of Indian Medical Association through Kerala state branch.

MEDICAL VISA (CHAPTER 3A CLAUSE 42A VISA MANUAL INDIA 2003)

Medical Visa was introduced in June 2005. It is granted to foreigners who have sought preliminary medical advice from their country of residence and have been advised to go for specialized medical treatment. The Indian missions abroad scrutinize the medical documents to satisfy themselves about the bona fide purpose for which medical treatment visa is being requested. The initial validity of medical visa is 1 year or the period of treatment, whichever is less. It can be extended for a further period of 1 year by the State Governments or Foreigners Regional Registration Offices (FRROs) or Foreigners Registration Offices (FROs) on production of a medical certificate from reputable/recognised/

specialised hospitals in India. Further extensions can be granted by the Ministry of Home Affairs on the recommendations of the State Governments/FRROs/FROs supported by appropriate medical documents. The visa is valid for a maximum of three entries during the year. Foreigners coming to India on the medical visa are required to get themselves registered with the concerned FRROs within 14 days from the date of their arrival in India.

However, registration formalities for Bangladeshi and Pakistani nationals will be as per the provisions contained in para 106 of the visa manual in respect of Bangladeshi national and para 118 of the visa manual in respect of Pakistani nationals.

A Medical Visa is given to those seeking medical treatment only in reputed/recognised specialised hospitals/treatment centres in India. Up to two attendants who are blood relatives are allowed to accompany the applicant under separate Medical Attendant Visas, and the Medical Attendant Visa will have the same validity as the Medical Visa.

Although not exhaustive, the following list of ailments would be of primary consideration: Serious ailments such as neuro-surgery; ophthalmic disorders; heart-related problems; renal disorders; organ transplantation; congenital disorders; gene-therapy; radio-therapy; plastic surgery; joint replacement, etc.

The initial duration of the visa is up to a year or the period of the treatment, whichever is less. The visa will be valid for a maximum of three entries during the 1 year.

A foreign couple seeking surrogacy in India may apply for a Medical Visa and Medical Attendant Visa. The egg donor may apply for a Medical Visa and the companion attending on the egg donor may apply for Medical Attendant Visa. Any visa type other than Medical Visa for surrogacy purposes is punishable under Indian law. The foreign couple can be permitted to visit India on a reconnaissance trip on Tourist Visa, during which the notarised agreement between the couple and the prospective surrogate mother can be drafted, but no samples are to be given for surrogacy purposes to any clinic during such a preliminary visit.

Foreigners coming on "Medical Visa" will be required to get themselves registered mandatorily well within the period of 14 days of arrival with the concerned FRROs/FROs.

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