



# The Indian Journal for Research in Law and Management

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## MEDICAL NEGLIGENCE AND MALPRACTICE.

### INTRODUCTION:

Medical negligence refers to a healthcare provider's failure to provide the standard of care that a reasonable and prudent healthcare provider would provide in similar circumstances.

This can include errors in diagnosis, treatment, aftercare, or health management.

Medical malpractice is a type of professional negligence specific to healthcare providers.

It occurs when a healthcare provider's negligent acts or omissions cause injury to a patient.

### Medical negligence-

Medical negligence is one of the common type of negligence which is made by the doctors, being the guardian of the noble profession. Medical negligence consists of towards that is medical and negligence negligence is solely the failure to exercise reasonable care. medical negligence is no different. It is only that in case of medical negligence the doctor is the defender. In the action of negligence the following essentials are required :

- the defendant owned a duty of care to the plaintiff the defendant owned a duty of care to the plaintiff
- the defendant made a breach of the duty

Because of medical negligence around 52,00,000 medical injuries are recorded every year out of which 10 people fall victim to medical negligence every minute and more than 11 people died every hour in a country due to medical negligence.

### Medical Malpractice-

The plaintiff suffered damage as a consequence of that breach

A medical malpractice is an act of negligence wherein a physician in mostly cases he seeks the care of medical provider. Medical practice can be constituted by something as simple as failing to put the rails of hospital bed in the upright position, to something as complex as provided aim properly performing open heart surgery.

Medical malpractice May be even cost with the ill intent or with the malice motive to cause the harm or an injury to the patient which may not be same in the medical negligence case.

Malpractice can be committed by any type of healthcare provider who has a duty to offer you competent care this can include doctors, nurses, surgeons, anaesthesiologist call mom radiologist and others if a professional healthcare worker provided you with services that were performed without the required level of skills they can be held accountable for the consequences elements of a medical malpractice claim

- There was a doctor patient relationship meaning the medical profession had a professional duty of care to you.
- The medical provider breaches their duty by acting or a failing to act in a way that no reasonable skilled would have done
- You have damages as result of medical providers negligence, such as medical bills income losses or others.

Medical malpractices are by healthcare provider harms of patient by being negligent or incompetent. The standard of care is what a reasonable and prudent provider would do in similar circumstances. Medical malpractice lawsuits can be complex, costly, and time consuming, but may help patients get compensation and justice.

#### MAIN POINTS-

#### MEDICAL NEGLIGENCE-

In case of kusum Sharma versus batra hospital, it was held by the Supreme Court at the doctor often adopts a procedure which involves a higher element of frisk but they will be chances of success and failure for the patient an if it is the cost of suffering that was the risk and it did not yield the desire result this may not be amounted to medical negligence.

In case of jasbir Kaur versus state of Punjab where a newly born child was found dead in the hospital hospitals washroom with a and EYE quizzed it was found to be the negligence of the hospital that they did not provided the due care in the safety of the child. the court held at the hospital authorities were negligent and had not taken due care and precaution. Thus awarded the compensation amounted to ₹1,00,000.

#### **Standard of care**

It means an appropriate medication and the treatment should be provided to the patient by the doctor. The key should not be of the highest degree and of the lowest degree.

Helling v. Carey (1974): In this landmark case, the Washington Supreme Court ruled that the standard of care required ophthalmologists to routinely screen patients for glaucoma, even though the prevailing medical practice at the time was not to do so for patients under the age of 40

.Indian Medical Association v. V.P. Shantha (1995)

The court held that the standard of care must be determined based on the training, qualifications, and specialized knowledge expected of the medical practitioner.

## DUTY OF CARE-

The duty performed by the doctor should be proper and according to the standard of care. No healthcare professional immediately raises dealing with the case unless it is out of the area office expertise.

Doctor must have a patient as without which he cannot do without it. confidentiality of the details of the patient should be kept with the doctors secretary. Khan v Meadows (2021):

This case considered the scope of a doctor's duty of care, ruling that a doctor may owe a duty of care to a child for consequences that extend beyond the immediate medical treatment.

Darnley v Croydon Health Services NHS Trust (2018):

This case held that the duty of care owed by A&E staff extends to providing accurate information about waiting times, as this can affect a patient's decision to remain and seek treatment.

## **When breach then then burden of proof.**

In cases of burden of proof it lies on the plane thief as he has suffered injuries he has to prove with suitable evidences which makes the suit in his favour. It should be proved that the defendant was negligent which caused him Injury that is to the plaintiff

Res Ipsa Loquitur (The Thing Speaks for Itself):

In some cases, the plaintiff may be able to invoke the doctrine of res ipsa loquitur, which shifts the burden of proof to the defendant.

For example, in Byrne v. Boadle (1863), the court held that the plaintiff did not need to prove the defendant's specific negligence when a barrel of flour fell from the defendant's window and injured the plaintiff, as the circumstances spoke for themselves

In Clements v. Leahy (1985), the Supreme Court of Canada held that the plaintiff bears the burden of proving, on a balance of probabilities, that the defendant's negligence caused the plaintiff's injuries

## **Defences-**

**Section 80 of Indian penal code 1860.** Anything which happens as a result of an accident or misfortune and without any criminal intention or knowledge in the doing of unlawful act in a lawful manner lawful means and with proper care and caution is not an offence.

**Section 81 of the Indian penal code comma 1860** states that if Anything is done merely by the reason that is likely to cause harm but if the same is done without any intention to cause harm and in good faith in order to avoid other damages to a person or his property is not an offence.

**Section 88 of the Indian Penal Code 1860**, says that no one can be accused of any offence if the act is done in a good faith what the good and does not intend to cause harm if there is a risk involved and the patient has given the consent explicitly or implicitly.

## **MEDICAL MALPRACTICE-**

Miss diagnosis,

a doctor may diagnosed a patient the wrong medical condition that if a reasonable competent physician with similar training would have provided an accurate diagnosis. Like for example if you are facing a chest pain and you are diagnosed that you will have an heart attack that would be a misdiagnosis.

incorrect treatment

If a doctor mistakenly gives a patient the wrong treatment which he was not supposed to do if he would be a competent physician then that would amount to incorrect treatment. For example the patient was in need of medicine a but he was provided with some other medicine b because of which he was not cured so it would amount to medical malpractice.

**surgical malpractice,**

now a days more commonly surgeons have high level negligence in cases of surgical wherein they are Aath mistake in operating on the wrong patient, wrong side operations, living nice in the body parts, removal of healthy tissues rather than defunct tissues.

Wrongful death

sometimes medical practitioner is so negligent that it is causing the death of the patient in these cases you could issue a suit and can claim damages and even punishment to the doctor because of his negligence.

Anaesthesia errors

Giving the wrong dose of anaesthesia to the patients at the time of operations causing the death of the patient on bed, and by even giving wrong oxygen level, waking up during surgeries, brain damage blood cloth all things all these things leading to death of the patient or putting them into the coma situations

An Individual who have suffered legal injury or damage or bodily injury or damage Because of medical malpractices can get compensation from filing the suit against the doctor and can even file against the hospital.

You can get compensation by insurance companies negotiating outside court by taking lump sum amount outside the court. but you have to prove that the doctor was negligent at part of his duty then only you can receive the compensation and it will be provided to the degree of offence. Nizam Institute of Medical Sciences v. Prasanth S. Dhananka (2009):The Supreme Court established the principle of “proportional liability” in medical negligence cases, where the compensation amount is tied to the degree of negligence.

Compensation maybe available to recover the damages of medical bills, lost wages, pain and suffering, emotional distress, loss of life enjoyment, lost of time, a lawyer can scrutinise a settlement of between the doctor and even the injured party by providing them compensation. the settlement amount depends on the loss suffered by the plaintiff that is patient in this case and the laws of earning, loss of time, emotional distress, physical distress according to which the compensation may be granted

Pradip Kumar Sarkar v. Calcutta Medical Research Institute (2014):

The National Consumer disputes Redressed Commission (NCDRC) held that hospitals have a duty to ensure the safety and well-being of patients, and can be held liable for negligence even if the direct act was committed by a third-party.

### **Informed consent-**

Consent should be taken from the patient before the operation, the operation being successful doctor shall be held liable for damages because it was not taken by the patient about the consent. if there was risk of 30% that the patient may lose his limb or any other part and even if the surgery was successful the doctor would be held liable as he did not to the concern from the patient. Samir Konkani v. Dr. Ravi Ranjan (2016):

The NCDRC held that doctors have a duty to obtain Informed consent from patients before administering treatment, and failure to do so can constitute negligence.

Section 304A: Causing death by negligence:

This section deals with cases where a medical practitioner’s negligence or reckless behaviour causes the death of a patient.

The punishment under this section is imprisonment of up to 2 years, a fine, or both.

Section 336: Act endangering life or personal safety of others ,Section 337: Causing hurt by act endangering life or personal safety of others and section 338 of Indian penal code, This section covers cases where a medical practitioner’s negligent or reckless act endangers the life or safety of a patient.

Greenberg v. Perkins (1993):

The Colorado Supreme Court recognized a cause of action for negligent credentialing, holding that hospitals have a duty to exercise reasonable care in the selection and retention of medical staff.

Freys v. Kingery (1981):

The Supreme Court ruled that a physician has a duty to disclose to a patient all material information regarding the patient's condition and the proposed treatment, including the risks and alternatives.

## **THE TYPE OF DAMAGES WHICH A PLAINTIFF GET-**

**COMPENSATORY DAMAGE**-Here in the plaintiff main cat monetary damages that is the damages for loss of learning loss of pay, medical expenses, mental distress, or any other expenses which he may have occurred due to the medical malpractices.

**Punitive damages**-here in damages are awarded if the defendant is found guilty of malicious or willful misconduct.. united damages in the form of punishment it is compensation in addition to actual damages.

- **DIFFERENCE BETWEEN MEDICAL NEGLIGENCE AND MEDICAL MALPRACTICES-**
- Medical negligence refers to the failure of a healthcare provider to exercise the standard of care expected of them, resulting in harm or injury to the patient.
- Medical malpractice is a specific type of medical negligence that involves a healthcare provider's intentional or reckless disregard for the patient's well-being. Medical malpractice typically involves a more egregious or substantial deviation from the standard of care.
- Medical malpractice claims generally require a higher burden of proof compared to medical negligence cases.
- Medical negligence is a broader term that can apply to any profession, while medical malpractice specifically applies to healthcare providers.
- To prove medical malpractice, the patient must show the healthcare provider's actions directly caused harm, while medical negligence only requires showing the standard of care was not met.
- In India, the punishment for medical negligence and medical malpractice is primarily governed by the following laws:
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  - The Indian Penal Code (IPC):
  - Section 304A: Causing death by negligence – This can attract imprisonment up to 2 years, a fine, or both.

- Section 336: Act endangering life or personal safety of others – This can attract imprisonment up to 3 months, a fine, or both.
- Section 338: Causing grievous hurt by act endangering life or personal safety of others – This can attract imprisonment up to 2 years, a fine, or both.
- The Medical Council of India (MCI) Act:
- The MCI can take disciplinary action against registered medical practitioners, including suspension or revocation of their medical license, for professional misconduct, including medical negligence.
- The Consumer Protection Act, 2019:
- Patients can file consumer complaints against healthcare providers for deficiency in service, which can result in compensation being awarded to the patient.
- The amount of compensation is determined based on the extent of harm and suffering caused to the patient.
- The Clinical Establishments (Registration and Regulation) Act, 2010:
- This act empowers the government to take action, including suspension or cancellation of registration, against clinical establishments for providing substandard care or violating prescribed .

Doctors and health care providers can take following claims to get oneself protected from liability they are as follows:

- Lack of negligence – The healthcare provider can argue that they met the standard of care expected of a reasonable provider in that situation, and therefore were not negligent.
- Informed consent – If the patient was properly informed of the risks of a procedure and voluntarily consented to it, the provider may not be liable for negative outcomes.
- Contributory or comparative negligence – If the patient failed to follow the provider's instructions or did something that contributed to their own injury, it may reduce or eliminate the provider's liability.
- Statute of limitations – Medical malpractice claims typically must be filed within a certain time period (e.g. 1-3 years) from when the injury was discovered.
- Act of God – If an unforeseeable and unpreventable event occurred that led to the patient's injury, the provider may not be liable.

## **CONCLUSION-**

It is concluded from the above information mentioned that the medical negligence is acted negligently wherein in cases of medical malpractices it is done as a willfully act with a bad motive or malice intention. In both cases the injury to the patient can be small and can be so grievous that can lead to death of patient. In both cases the doctor and healthcare providers are punished by fine or imprisonment or by both. So, The doctors should act carefully and with in good faith of the

patient. And should work as per standard of care and duty of care .People are losing faith in the medical profession due to some serious medical negligence cases which have made them disabled further remaining lives for stop some serious introspection analysis are required to be done for the medical profession medical ethics need to be reformed and developed so as to serve with complete righteousness. Medical negligence remains a pervasive and devastating problem within the healthcare system. Too many patients suffer serious harm or even lose their lives due to the carelessness, incompetence, or recklessness of medical professionals. The physical, emotional, and financial toll on victims and their families is immense. The occurrence of medical malpractice is unacceptably high, it is crucial to remember that the vast majority of healthcare providers strive to deliver the highest quality of care. They are dedicated individuals who have committed their careers to helping others. Unfortunately, the complexities of modern medicine, systemic pressures, and simple human fallibility can sometimes lead to devastating mistakes. Medical malpractice also carries substantial financial burdens for patients, healthcare providers, and the system as a whole. The key moving forward must be a concerted effort to reduce the frequency of medical malpractice incidents. This will require a multi-pronged approach, including: Enhanced medical education and training to in still a culture of safety, accountability, and attention to detail Improved healthcare system infrastructure, protocols, and technology to catch errors before they reach patients. Stronger oversight, regulation, and disciplinary measures to hold negligent providers accountable. Better communication, transparency, and support for patients who have been harmed. So , it is better to reduce both medical negligence for growth and well being of people and society . As everyone has right to life and with dignified life.

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