The Cost and Means of Minimizing Medical Negligence Incidents in Hospitals

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Abstract

Hospitals and physicians in the U.S. were first exposed to medical negligence in 1965. The court in Darling vs Charleston Community Hospital established the corporate liability of the hospital for quality of care. The Carleto vs Shore Memorial Hospital case in 1975 established that the medical staff could be held liable for quality of care. In India the Supreme Court in 2009 awarded the highest amount of one crore plus interest at the rate of 6% against the hospital and a second award of Rs. 5.96 crore in 2013 with 6% interest against the hospital and three doctors effective from the date the cases were filed.

The common errors which result in medical malpractice cases are due to misdiagnosis or delayed diagnosis, childbirth injuries, medication errors, anesthesia errors, and surgery errors. The most overlooked risks to physicians in office-based practice are due to faulty communication, lack of informed consent, failure to stay up-to-date on standards and training, inadequate follow-up of diagnostic tests and specialist referrals, variation in policies and procedures, and avoidance behavior.

Lawsuits for medical negligence can be minimized or avoided by taking steps to keep patients satisfied, adhering to policies and procedures, developing patient-centered care and knowing ways of defending against malpractice judgments. Having comprehensive professional liability insurance is a necessity in the present day litigious society.

Keywords: medical malpractice, medical negligence, lawsuits, protocols, patient-centered care.
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Introduction

Hospitals and physicians were first exposed to lawsuits from patients in the U.S. in the mid-1960s. The landmark court decisions in Darling vs Charleston Community Hospital in 1965 established the corporate liability of the hospital for quality of care. The Carleto vs Shore Memorial Hospital case in 1975 established that the medical staff could be held liable for quality of care.

It was following these two decisions in the U.S. that effective risk management assumed major importance because of increasing number of claims against hospitals, higher damages, and bad publicity affecting hospitals. The malpractice cases against doctors and hospitals in the U.S. reached a crisis stage in the 1980s. This was the beginning of formal “incidence reporting” and the addition of in-house risk managers to analyze trends and suggest interventions to prevent or mitigate trends.

In India, Sri Justice Subhashana Reddy, Chairperson of Human Rights Commission inaugurated the site on the event of ‘Human Rights Day’ Celebrations held in Hyderabad on December 10, 2009. Justice Reddy declared, “Patient is consumer, if found there is negligence on the part of medical practitioner/hospital, patient has every right to approach the Hon’ble Court of Law for compensation and remedies on production of sufficient evidence.” He also said that the doctors and hospitals should be aware of laws related to medical practice to avoid "vexatious complains and for better practice."

Medical Negligence Scenario in India

The landmark case of medical negligence in India which dates back to 1990 was settled in 2009 by the Supreme Court (SC) of India. The SC directed the Nizam’s Institute of Medical Sciences (NIMS) in Hyderabad to pay Rs. one crore as compensation toward medical negligence to a young computer engineer in his 20s who became a paraplegic after he underwent a wrongful surgery without consent for removing a benign tumor in the chest resulting in damage to blood vessels connected to the spine, leaving the young patient paralyzed below the waist. The SC also imposed interest at the rate of 6% from 1999 when the National Consumer Disputes Redressal Committee (NCDRC) gave the Rs. 15.5 lakh award as compensation.

A second case in 2013 in which the SC ordered a Kolkata hospital and three doctors to pay Rs. 5.96 crore for medical negligence along with interest to the physician husband who lost his 29-year-old child psychologist wife during their visit from the U.S. to India in 1999. The Rs. 5.96 crore judgement was against the Advanced Medicare and Research Institute (AMRI) and the doctors to pay the amount with interest at the rate of 6% from the date of filing the case in 1999.

In both the above mentioned cases, awards of Rs. 15.5 lakh and Rs. 1.73 crore respectively by NCRDC were considered grossly inadequate by the plaintiffs. As a result of the enhanced judgments by SC, the trend for the medical malpractice lawyers will be to approach the courts and bypass NCRDC because of its history of lower awards.

Patient Injuries and Ways to Prevent Them to Avoid Lawsuits

Medical malpractice cases arise when a patient is harmed by a doctor or nurse or other medical professional who fails to provide proper health care treatment. Fortunately, doctors, nurses and other duly
trained and certified allied health professionals make mistakes in small number of cases. But within that minority of cases, certain types of errors crop up more often than others. The common errors are:

1. Misdiagnosis or delayed diagnosis
2. Childbirth injuries
3. Medication errors
4. Anesthesia errors
5. Surgery errors

Of the above, surgical treatment is the most common allegation with 25% of all claims. The next allegation was found to be for misdiagnosis or delayed diagnosis which made 21% of all claims.

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In order to prevent injuries to patients, doctors tend to be really hard on themselves to the extent that primary care physicians see every wart in the process of care. Regardless, risks surround physicians every day. By recognizing what poses the greatest risk, physicians can create and implement formal policies and procedures to protect their practices.

India has ample opportunities to improve the delivery of health care in a majority of public sector and stand alone private hospitals. Comparatively speaking, corporate health care systems are better organized and are beginning to pay attention to implementing programs aimed at protecting the assets and minimizing financial loss to the hospitals – the activity that can be referred to as risk management. It (risk management) is a series of strategies designed to reduce the likelihood of injury to the patient, and when the injury occurs, to reduce the likelihood that a malpractice lawsuit results.

The required procedures in place for reporting patient injuries and lawsuits involving physicians in the U.S. are worthy of emulating in all hemispheres. In the U.S., the Physician Insurers Association of America (PIAA) reports that 70% of the claims closed within its Data Sharing Project (DSP) database have no indemnity payment. Among the 30% that close with an indemnity payment, the majority of risks surround claims alleging diagnostic errors.

PIAA’s most recent report is based on 2013 comparative data on claims closed between 2003 and 2012. The report shows that obstetrics is still the top medical specialty that has claims reported. The next specialties for claims are internal medicine, orthopedic surgery and general surgery. It was also found that the majority of claims reported are by patients themselves, except in pediatric cases and in cases of patient death or long-term injury.

In a 2013 survey conducted by Medical Economics. It was noted that the most overlooked risks to physicians in office-based practices included the following six risks. Also being presented are ways to mitigate.

1. **Faulty Communication** – Honest and open communication is the best approach that is why it is often referred to as “disclosure.”

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2. **Lack of informed consent** – Patient consent is a big area where claims can come to play. The physician should make sure that the patient has consented to whatever procedure the doctor is doing and the risks involved – that the surgery may lead to death or paralysis.

3. **Failure to stay up-to-date on standards and training** – Often, medical liability issues focus on the question of whether the doctor followed current standards of practice?
4. **Inadequate follow-up of diagnostic tests and specialist referrals** – Some of the frequent problems resulting in litigation involve orders for tests and the corresponding lab or X-ray results. The referring office should set a reminder as to when to expect the report.

5. **Variation in policies and procedures** – There should be set of rules that all staff should understand and follow. The written policies and procedures should be readily available to all staff members.

6. **Avoidance Behavior** – Compassionate gestures count. The physician should look through the family’s eyes, especially when there is a bad outcome. That is exactly when the family needs the physician.

The top factors that actually contributed to patient injury are:
1. Problem with clinical judgment (38%)
2. Technical skills (23%)
3. Communication (22%)
4. Patient behaviors (20%)
5. System failures (14%)
6. Documentation (13%)

**Developing Patient-Centered Care**

In order to deliver patient-centered and coordinated care, hospitals need to operate under a clear vision and strategic plan that is upheld throughout the organization. The following six steps can help hospitals strengthen their workforce strategy for patient-centered and coordinated care.

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1. Develop hospital governance structures to the patient experience.
2. Include “Patient Champions” throughout the hospital workforce.
3. Ensure each component of the workforce understands its role in meeting goals for patient-centered care.
4. Approach patient-centered care goals with as much intent and structure as other core measures.
5. Find a happy medium for checklists.
6. Acknowledge and reward employees for their contributions.

In addition, all efforts should be made to put patient safety first and work to reduce preventable injuries. Continuous efforts need to be made to foster better communication between doctors and the patients. When patients are injured, they should be compensated in a fair and timely manner, while also reducing the incidence of frivolous lawsuits.

**Steps to Keep Patients Satisfied**

It has been found that communication is a common thread. Poor communication can affect the patient experience by delaying patient admittance and discharge, and can cause a host of problems in between. Patients can receive exceptionally high quality of care, yet still be dissatisfied because of how they perceive staff is communicating (or not) even during short interactions. In order to keep patients satisfied, the following steps are recommended:

1. Give patients a fast, smooth admittance process.
2. Communicate test results promptly.
3. Respond quickly to the patient.
4. Coordinate provider communication.
5. Promote a quieter and more restful healing environment.
6. Speed the discharge process.

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Ways of Defending Against Malpractice Judgments

Malpractice suits have to be defended by even the best-of-the-best hospitals. Following are some of the way of defending against malpractice judgments.

1. It is absolutely essential to document. Not Documented would mean “Not Done” in the court of law. Hence DO Document!
   Documentation has legal credibility when it is:
   - Contemporaneous
   - Accurate
   - Truthful
   - Appropriate

2. Getting with the policy – Policies and Procedures provide a safety zone that ultimately protects from suffering the damage of a malpractice lawsuit.
   - They set concrete, specific standards for providing quality care for interacting properly with patients, families, and staff.
   - They establish structure and controls that constitute organization’s chain of command and responsibility.
   - They guide all employees in determining what is expected as an employee in the workplace.

3. Everyone’s responsibility
   - To make sure that everyone knows and follows the policies and procedures.
   - In case of infraction, either correct it or notify those responsible for correcting it.
   - Keep the policies and procedures current.

4. Malpractice insurance
   - Have a comprehensive one which provides 24x7 coverage.

5. The best defense
   - Legally credible documentation
   - Compliance with policies and procedures

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Conclusion

Medical negligence, also referred to as medical malpractice, is a care of health care providers not meeting the standards of practice and causing injury or death. The standards and regulations for medical malpractice vary by country and jurisdiction within countries. The expected standard of care is generally based on community standards. For example, in the U.S., the standard of care in a rural community hospital is not expected to be of the same quality as in a metropolitan city having academic health centers and super specialist hospitals providing tertiary care with the latest technology.

With the exception of a few Western countries, especially the U.S., most other countries do not have the mandatory reporting system of medical errors. Consequently, a large number of cases of
medical negligence go unreported. In the court of law, expert testimony is required. In the U.S., there are medical doctors who have made a career of giving expert testimony. On the other hand, in India, it is difficult to find specialists willing to give expert testimony against a fellow doctor practicing the same specialty. There is also fear of intimidation by other medical doctors who would be present in the court room to give moral support to the accused doctor. Medical professionals can obtain professional liability insurances to offset the risks and costs of lawsuits because of alleged medical malpractice.

There are definite ways and means of minimizing incidents of medical negligence in hospitals by following medical protocols, adhering to policies and procedures which need to be regularly updated, having an established system of credential and professional reference checking, incident reporting, and having a culture of correct and contemporaneous documentation, documentation, and documentation.

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Bibliography

2. “Patients Rights in Medical Negligence Inaugurated.” (www.medicalnegligencehelpline.info)
5. “Six Steps to Keep Your Patient Satisfied.” (www.amcomsoftware.com)
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Biography

Prof. M. Habeeb Ghatala is from Hyderabad. He received his B. Sc. (Agriculture) from Osmania University in Hyderabad in 1959. He left for U.S. the same year and joined Kansas State University in Manhattan, Kansas where he earned his M.S. in Extension Education and Sociology. He received his Ph.D. in Extension / Continuing Education and Sociology from the University of Wisconsin, Madison and did postdoctoral studies in Distance Education. Prof. Ghatala earned his MHA in Health Care Administration from Texas Woman's University in the Texas Medical Center, Houston. He was also a licensed Financial Services Professional for five years with the New York Life Insurance Company in USA.

Prof. Ghatala held research, faculty, and academic administrative positions at the University of Wisconsin-Extension, Humboldt State University in California, University of Cincinnati in Ohio, Weber State University in Utah, Saudi Arabian Educational Mission to the USA in Houston, Security Forces Hospital in Riyadh, Kingdom of Saudi Arabia, and Hahnemann University Medical Center in Philadelphia, Pennsylvania. Prof. Ghatala returned to Hyderabad in 2006 after being abroad for 46 years. He joined Apollo Hospitals Group in 2006 and is presently serving as Dean of Non-Medical Institutions. He is widely published and has traveled to 40 countries on six continents.

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Biography

Prof. Lakshmi B is Dean of Management Programs, Director of Centre for Human Development, and Chairperson of Health Studies Area at the Administrative Staff College of India (ASCI). She also served as In-Charge Registrar and Secretary of ASCI.

Prof. Lakshmi earned her B.A., M.A., M. Phil. and Ph.D. in Economics, Public Administration, and Human Resources Development from the University of Madras. She also has a Diploma in Journalism from SIET Women's College followed by a Post Graduate Diploma in Public Relations from Annamalai University. Prof. Lakshmi received her Postdoctoral Master's in Hospital Administration (MHA) from the University of New South Wales in Sydney. In addition, she earned the Graduate Diploma in Education specializing in Human Society and its Environment from the University of New England in Armidale, New South Wales, Australia. Prof. Lakshmi also holds
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Prof. Lakshmi is certified by the Department of Personnel Training in Delhi as a Lead Trainer for the programs on “Ethics and Values in Public Administration.” In the international arena, Prof. Lakshmi conducted MDPs for the Commonwealth and multinational sponsored programs for the South Pacific Islanders in Papau New Guinea.