
LEGAL ASPECTS OF GENERAL PRACTICE

General Practitioners usually are afraid of dealing with medicolegal work and find a lot of problems in their day to day to practice. In our country forensic medicine is taught at the undergraduate level and all the registered medical practitioners are supposed to follow the law of the country. Ignorance of law is not an excuse. Here I am going to highlight the legal aspects of the general practice briefly.

For treatment of the patient there is a Supreme Court ruling that medicolegal aspects are secondary to life of patient. Treatment should never be withheld due to reason that medicolegal examination has not been done. Every effort should be made to save the life of patient. To fix the responsibility even in nursing homes and small hospitals, duty roster and attendance registers should be maintained.

Prescription should be on proper slip with name, age, sex and address. It should be in legible handwriting. All the prescribed medicines should have proper doses & instruction. All the investigations requested should be mentioned on it along with their results so that noncompliance by the patient if any comes to the notice immediately. Follow-up date should be clearly mentioned. It should always bear the signature, name, seal & registration number of the doctor. It will be a very good practice to have the thumb impression of the patient over it so that if later on there is any problem of identification of the patient it could be solved satisfactorily.

While issuing the certificates there should be no carelessness. A false certificate should never be issued. Copy of the certificate must be kept for record so that if doctor is called in the court to testify the correctness of the certificate, he will not be afraid that what for he is being called in the court. Identification marks, signatures or thumb impression of the patient must be on it. If called by court must attend court to certify the issued certificate. Always mention self name and registration number. It should also bear the seal.

All the records of the patient must be kept for at least 3 years. It is a must to provide copy of the records within 3 days of asking. All copies should be duly attested before giving it to the patient. Maintain confidentiality of the records by keeping in safe custody. Professional secrecy must be maintained while issuing the copies of records.

Legal aspects of patient care are also very important. There are very high expectations of the patient due to growing consumerism. Ignorance and lack of knowledge of the doctors lead to unnecessary legal problems. All the doctors must know their responsibilities to patient, state & law. All the doctors who are practicing must be qualified medical practitioner and registered and should practice their own system. It is very important for the general practitioners to know what they should not do as these are the professional misconducts. They should not associate with unqualified persons by assisting or employing them or by giving them some certificate so that they can practice. There should be no advertising of the profession whether it is direct advertisements e.g. in the form of large name plate, advertisement in telephone directory or in the press. Indirect advertisement is also prohibited like giving of articles in press which are of not general public interest and which gives the impression of advertisements or appearing on the television for publicity. There should be no canvassing by using agents or touts. They should not be involved in adultery; they should not help or do pre natal determination of sex and do illegal abortions. They should not consume liquor or drugs and be intoxicated on duty. Consultations whenever required should never be avoided.

One should not write prescriptions in secret formulae. No doctor should sell schedule poisons or run open shop for sale of medicines and should never contravene provisions of Drugs Acts. There should be no commercializing of secret remedy.

Patient of another doctor should not be attended. One should never refuse service on religious grounds. A doctor should always be ready to help during emergency.

Receiving or giving commission (dichotomy) is a bad practice and should not indulge in it. Talking disparagingly about colleagues is a bad habit and should be avoided. Whenever a doctor agrees to treat a patient there is a doctor patient contract of care. This is an implied contract to treat a patient with reasonable care & skill. This is true even if it is a voluntary service without fees. Medical practitioners should never disclose professional secrets of the patients except under privileged communications.

One should do duty towards patient carefully and should avoid acts of omission and acts of commission which may be considered as professional negligence. There is concept of corporate negligence or institutional negligence as well as vicarious responsibility. The superior person is responsible for the negligent action of the staff working under him.

Compulsory duties towards the state like notification of births, deaths, infectious diseases and food poisoning should always be done with care and responsibility, though he may not be paid for these services. He should always report homicidal poisonings & unnatural deaths. Doctor should always respond to the emergency military service and should always be willing to attend the accidents.

Though doctor has the right to choose patient, charge professional fee but patient has also the right to choose & change doctor. Patient has the right of information to his records, privacy & confidentiality and redressal of his grievances.

Consent should always be taken while examining and treating a patient. For examination there is an implied consent. But for more than examination, there should be informed (preferable) and expressed (for procedure) consent. Consent can be oral or written. Written consent is much better as it is easy to reproduce it if trouble arises. But there should not be blanket consent as it is invalid. For research & publications ICMR Code should be followed. Identity of the patient should never be revealed in publications and proper records should be maintained.

One should be aware of the relevant acts while doing general practice so that he does not come in conflict with the laws. He should be aware of the CPA 1986, Rules 1987, MTP Act 1971, Rules 1975, PNDT Act 1994, Rules 1996, Transplantation of Human Organs Act 1994, Mental Health Act 1987, Registration of Births & Deaths Act 1969, Motor Vehicles Act 1988, NDPS Act 1985, Drugs & Cosmetics Act 1940, and Protection of Human Rights Act 1993.

One should know that there are important laws of the land like IPC 1860, CrPC 1973 and IEA 1872

Important medico-legal cases during general practice are roadside accidents, factory accidents, unnatural mishaps, urn injuries, injury case likely to die and Injury case with foul play. Cases may be brought conscious, unconsciousness or dead. They are sometimes referred by courts. There may be suspected or evident suicides, homicides, poisoning cases or cases of sexual offences and criminal abortions. While dealing with such cases it is very important to inform the police, treat the case and do medicolegal examination. It is important to record dying declaration in serious cases.

In general practice we commonly see Injury cases, Burns cases and Poisoning Cases.

In injury cases always inform the police and after taking consent do medicolegal examination. Keep injuries under observation, if necessary and issue medicolegal certificate as early as possible. After observation send supplementary report as early as possible. Arrange for getting recorded dying declaration, if necessary

In burns cases inform the police, If patient serious, arrange recording dying declaration. If patient gives consent, medicolegal examination of the patient should be done and his report sent as early as possible to police.

In poisoning cases inform police; give treatment, record signs/symptoms carefully. If patient is serious, arrange for recording his dying declaration. Samples of gastric lavage, vomited matter, urine, blood samples should be preserved, seal & send to police under proper receipt.

In such medicolegal cases death certificate should not be issued and police should be informed

so that police may take the possession of the dead body. After the inquest is conducted, postmortem examination should be conducted by the authorized doctor. For conducting the medicolegal postmortem examination doctors are authorized by the state.

It is a case of dowry death if age of lady is less than 30 years or if she is married with in 7 years prior to her death. In such cases postmortem examination should be done by a board of doctors

In case of custodial deaths if death of prisoner or death of a person in custody of police occurs in hospital then magistrate should be informed through police. Postmortem examination should be done by a board of doctors (within 24 hours). If magistrate wants video recording of postmortem examination, it should be done.

In rape cases there is now CrPC 2005 Amendment. According to this there are some mandatory points for examination e.g. examined within 24 hours after take proper consent. Always examine in presence of female and note time of start and end and always state reasons for all conclusions. It is necessary to keep samples for examination of blood, stains, semen, swabs, sweat, hair, nails, DNA, etc. as required. One should remember that as per section 176 IPC, omission to give information to public servant by person legally bound to give it as such intentionally omits to give such information in the manner and at the time required by law shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both. If information is required to be given in respect of the commission of the crime or is required for the purpose of preventing the commission of the crime or in order to the apprehension of the offender with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.

As per section 177 IPC, whoever being legally bound to furnish information on any subject to any public servant as such furnishes, as true, information on the subject which he knows or has reason to believe to be false shall be imprisoned for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

As per section 201 IEA, causing disappearance of evidence of offence, or giving false information to screen offender the punishment is 1/4th of the longest term which can be given for that particular offence and which may extend to seven years and also shall be liable to be fined if punishment is capital punishment

In government hospitals fee for doing the medicolegal examination is charged if offence is non-cognizable. No fee is charged if offence is cognizable or case is brought by police. In private set up fee is charged as per institution's instructions under proper receipt

Dying declaration should be got recorded in all serious medicolegal cases. It is better to get it recorded from magistrate. In case there is likely to be delay, doctor should himself record dying declaration. Doctor should certify *compos mentis* in both the situations

On bead head ticket or indoor file, in medicolegal cases identification is rarely established. Ideally two scar marks should be noted. Otherwise thumb impression should be taken. Witnessed signatures of the patient can help in identification. All the entries should be made promptly and correctly. If death occurs in such cases death certificate should not be issued. But police should be informed so that postmortem examination should be carried out to find out the exact cause of death.

Summons is issued in civil cases and in criminal cases. In civil cases summons is usually accompanied by conduct money. If not, can request a judge for conduct money. If still judge sends back summons without such conduct money or it is criminal case, should go to the court but before giving evidence can request the judge for conduct money. If in govt. service govt. usually pays TA/DA. One should not refuse to give testimony for want of conduct money as court will give it after deposition in court. Court may issue bailable warrants or non-bailable warrants if summons are not complied with.

Punishment for non-attendance by a witness in obedience of summons is as per under 350 CrPC. After summary trial and giving an opportunity to be heard magistrate can fine him not exceeding 100

rupees.

Punishment for false evidence as per section 193 IPC. Whoever intentionally gives false evidence in any stage of judicial proceedings, or fabricates false evidence for the purpose of its being used in any stage of judicial proceeding shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to be fined.

There is a summary procedure for trial for giving false evidence as per section 344 CrPC. After a summary trial, person can be sentenced to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees or both.

According to PNDT Act there is prohibition of sex selection, before or after conception. This act is for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities. There is advertisement prohibition. There is permission of use of such techniques only under certain conditions by the registered Institutions and there is punishment for violation of the provision of the legislation. As per PNDT Act there is punishment for first offence of fine Rs. 10,000 and punishment up to 3 years and erasure of name for 5 years from register. For second offence to the doctors, there is fine of Rs. 50,000, punishment up to 5 years and professional death sentence.

One should be aware of the latest MCI guidelines that 30 hours of CME must be attended in five years which has been enhanced to 50 hours by Punjab Medical Council and records must be kept for three years.

Records should be provided within 3 days when a request is made. Information Officer, on receipt of a request shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provides the information on payment of such fee prescribed or reject the request for any of the reasons. Where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

Without any reasonable cause, refusal to receive an application for information or has not furnished information within the time specified under sub-section or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day after application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Person shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

This information should not be given in cases of where information would impede the process of investigation or apprehension or prosecution of offenders and the information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

To deal with these circumstances the doctor's must have indemnity insurance which may be professional indemnity policy or Medical establishment, professional negligence, errors & omissions insurance policy. There are groups with increasing premiums from Physicians, Radiologists, and Pathologists to Specialists Non-Surgical to Specialists Surgical. Most costly is for the Super Specialists and anaesthetists.

I hope all this information will make general practitioners more knowledgeable, careful and will help them to practice fearlessly.

Prof. R.K. Gorea