Knowledge About Legal Aspects Of Medical Negligence In India Among Dentists

– A Questionnaire Survey

ABSTRACT

Introduction:

Awareness towards medical negligence is increasing day by day among the patients. The doctors have to be more careful in preventing any malpractice. There is no special subject where dentists learn about law . Hence this study was done to bring awareness among dentists after assessing their knowledge on legal aspects of medical negligence.

Materials and methods:

An online questionnaire with 15 questions regarding legal aspects of medical negligence was sent to 100 dentists. The completed forms were evaluated. The results were calculated as percentage and tabulated as graphs.

Results :

The awareness was less among dentists for most questions.Majority of them knew the term medical negligence but terms least known were res ispa loquitor, bolam’s test and Bolitho case. The other questions had less than an average response.

Conclusion :

The survey showed that knowledge of dentists regarding the legal aspects of medical negligence was less. This survey assessed the knowledge of the dentists and also enlightened the respondents with answers pertaining to the questions. More awareness must be created all over so that doctors are more careful and hence patients benefitted.

Keywords: Medical negligence, law, knowledge.

Introduction

Medical negligence is the breach of legal duty to care which includes the damages, and establishing causation.(1) After the Consumer Protection Act, 1986, numerous cases are reported against doctors due to public awareness which is growing now in India. A breach of this duty gives a patient the right to initiate action against negligence(2). The present study aims to assess the knowledge of dentists regarding law and medical negligence in India and create an awareness among them. This will make the doctors more aware about the responsibility towards patients.

Materials and methods

An online questionnaire consisting of 15 questions regarding knowledge on legal aspects of medical negligence was sent to Following the 15 questions the right answers for the questions were given . The respondents had to choose between options ‘know’ and ‘don’t know. If the respondent knew the answer, he/she had to check it with the answer below and then choose the option ‘know’ if it correlated. Then they had to choose the option ‘don’t know, ’if the answer was wrong or did not correlate with the right answers. The details regarding the age , gender and years of experience in dentistry was also collected with each form. The results of the survey are tabulated in Table 1.

Results

Majority were between 20-30 years of age, were females and had experience less than 5 years . The modal age distribution, gender and years of experience are represented in Fig 1-3.

Among the 15 questions regarding law and medical negligence in India, The % of respondents who knew the answers were : 91% for medical negligence, 45% for the Standard to judge the negligence of the doctor, 29% for Implied undertaking, 2% for res Ispa loquitor, 2% for Bolam’s test, 3% for Bolitho case,51 % for Civil negligence, 41% for Criminal negligence, 66% for Punishment for medical negligence, 60% for When can a doctor be arrested? ,39 % for Are you punishable for free services, 47% for When is the dr not punishable , 14% for Vicarious liability , 24% for Burden of proof and 69% for Consumer protection act.

Discussion

Doctors are prone to deliver good service at all times. But if there is a breach in the duty due to an act of commission or omission then they are said to be medically negligent. The consequences that follow when a patient takes this legally is of great importance to the doctor. Knowing the laws and its basis that govern medical negligence will keep the doctors in a proper position to serve patients better and more cautiously .

People are more educated now than before. They are aware of their rights. In the medical field, the public can procure their rights through Consumer protection act. This study analysed the knowledge of dentists on legal aspects of medical negligence.

Doctors must exercise an ordinary degree of skill (3). No doctor can give a warranty of the perfection of their skill or a guarantee of cure. If the doctor has adopted the right choice of treatment, if she/ he is skilled and has worked with a method best suited to the patient, she/ he cannot be blamed for negligence if the patient is not totally cured (4).

In a study done to find out medical errors in radiation oncology (RO) practice it was found that cases involving benign disease (p=0.009), treatment of the wrong site (p=0.001), or treatment using the wrong dose (p<0.001) were all associated with indemnity payments(1) Better characterizing these events can educate providers with the goal of improving patient care.(1)

The knowledge regarding these questions is important, since in day to day practice, doctors have to deal with several patients with different ailments. We must be knowledgeable to pursue things on the safer side as well as only do good to the patient. But the results show less awareness of the dentist regarding these terms. This can be attributed to the fact that there is no special subject taught to the dentists regarding law which will increase their awareness and responsibility.

Among all the questions maximum no. of responses with an answer ‘know’ was for the term medical negligence which is breach of the said duty; and Consequential damage that follows. This may be due to the common usage and its frequency of use more than the other terms.

A doctor need not possess the highest expert skill. The standard of the accused doctor is adjudged with an ordinary doctor of the same profession with ordinary skills. (5)

Its understood that any professional in their field (law, medical, engineering)acquires and has the skill that profession needs after graduating . Majority of them did not know the term Implied undertaking which means that any person who offers medical advice and treatment implicitly state that they have the skill and knowledge to do so, that they have the skill to decide whether to take a case, to decide the treatment, and to administer that treatment(6).

The questions with the least response were Res ipsa loquitor, Bolam’s test and Bolitho case. The following three are.

1)The principle of res ipsa loquitor (legal principle for a ‘thing speaks for itself’)e.g.prescription with the wrong medicine or a cotton swab/ instrument inside the lesion during surgery. In certain circumstances no proof of negligence is required beyond the accident itself. (7)

2)According to Bolam’s test, a doctor, who acts by a practice accepted as proper by a responsible body of medical men,is not negligent mainly because there is a body of opinion that takes a logical reasonable view.

3)Bolitho case is causation must be proved to bring a claim in negligence and whether the doctor acted by a practice accepted as proper by an ordinarily competent doctor.

More than half knew the term civil negligence which means the professional shows negligence but does not cause death of the patient.

Less than half knew the term criminal negligence but the punishment given was known by greater number of them. Section 304A[10] of the Indian Penal Code of 1860 states that“whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide. The doctor shall be punished with imprisonment for a period of two years, or with a fine or with both.

Sections 80 and 88 of the IPC(Indian Penal Code) contain defences for doctors accused of criminal liability. Nothing is an offence that is done by accident or misfortune and without any criminal intention under Section 80.

A private complaint of rashness or negligence against a doctor may not be entertained without prima facie evidence in the form of a credible opinion of another competent .In addition, an independent opinion should be received from an investigating officer, preferably of a government doctor. A doctor may be arrested only if the investigating officer believes that she/ he would not be available for prosecution unless arrested which was known by majority of them.(8)

Before, doctors were not liable for their services individually or vicariously if they do not charge fees. Now under the torts law or civil law, they can be punished even if the doctor provides free services.

Negligence cannot be attributed to a doctor merely because the doctor chooses one procedure over other, he won’t be liable when done with proper care and caution.

Less than a quarter knew that many a time the doctor will also be responsible vicariously, meaning thereby if his employee/servant rashly causes the death of a patient. In that case, the employee as well the doctor will be liable due to the principle of ‘Vicarious Liability’ under Tort law.(9)

Patient has to try and prove the doctor’s fault. Burden of proof is on the one who complains. If a patient alleges malpractice in medical field, the law will require a higher standard of evidence to support it. The best evidence available in medical science presented with expert opinion is required by the complainant to prove negligence by the doctor. It was held that negligence has to be established and cannot be presumed (10) and it must be proved by the onus as in Kanhaiya Kumar Singh vs Park Medicare & Research Centre.

Consumer protection act came out in 1986 which means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance that is required to be maintained by or under any law for being in force at that given time(2)

These are a few terms that a dentist or a medical professional should know to ensure the patients’ and his safety .

Conclusion

This survey is the first of its kind to assess the knowledge of dentists regarding law and medical negligence in India. The survey results have shown there is less awareness among dentists regarding law and medical negligence . This survey has done a good job in creating an awareness after assessing their knowledge since the answers were given at the end of the questionnaire . Knowledge regarding this is important for both the doctors and patients since both their rights and dignity has to be maintained.

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Table 1 :

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| --- | --- | --- | --- |
| S.No | Knowledge on | Number :I know | Number I don’t know |
| 1 | Medical negligence | 91 | 9 |
| 2 | The Standard to judge the negligence of the doctor | 45 | 55 |
| 3 | Implied undertaking | 29 | 71 |
| 4 | Res Ispa loquitor | 2 | 98 |
| 5 | Bolam’s test | 2 | 98 |
| 6 | Bolitho case | 3 | 97 |
| 7 | Civil negligence | 51 | 49 |
| 8 | Criminal negligence | 60 | 40 |
| 9 | Punishment for medical negligence | 66 | 34 |
| 10 | When can a doctor be arrested? | 60 | 40 |
| 11 | Are you punishable for free services? | 39 | 61 |
| 12 | When is the dr not punishable? | 47 | 53 |
| 13 | Vicarious liability | 14 | 86 |
| 14 | Burden of proof | 24 | 76 |
| 15 | Consumer protection act | 69 | 31 |