

Professional Misconduct (Medical Malpractice) & Medical Negligence (PDFPF)

Prof P. Anuruddhi S Edirisinghe

MBBS, MD(For Med), DLM, DMJ(Lond), MFFLM



University of Kelaniya
Faculty of Medicine

Aims and Objectives

- To understand the terms meant by
 - professional misconduct /acts of derogatory conduct
 - Medical Negligence
- To know the acts considered as professional misconducts
- To understand the principles of medical negligence
- To know the common situations where medical negligence can be brought against a doctor

To produce a medical graduate
who will adhere to basic ethical
practices of the profession during
his/her carrier

Knowledge, skills and attitudes

Professional conduct



Conducts activities of the profession according to the written and unwritten Codes of Ethics of the Medical Profession including International Declarations



Definitions of Professional Misconduct

- Professional Misconduct is where personal professional behaviour fall below that which is expected of a doctor.
(Knight , Simpsons Forensic Medicine1996)
- Conduct inappropriate to the practice of health care
(Jonas: Mosby's Dictionary of Complementary and Alternative Medicine. 2005)
- Behavior by a professional that implies an intentional compromise of ethical standards.

Ethical Malpractice/Ethical misconduct/ Infamous conduct (Legal Explanations)

'If a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of infamous conduct in a professional respect.'

1894 by Lord Justice Lopes

ගැසිරීම

'Infamous conduct in a professional respect means no more than serious misconduct' ^{විෂමාවාරය} judged according to the rules, written or unwritten, governing the profession.'

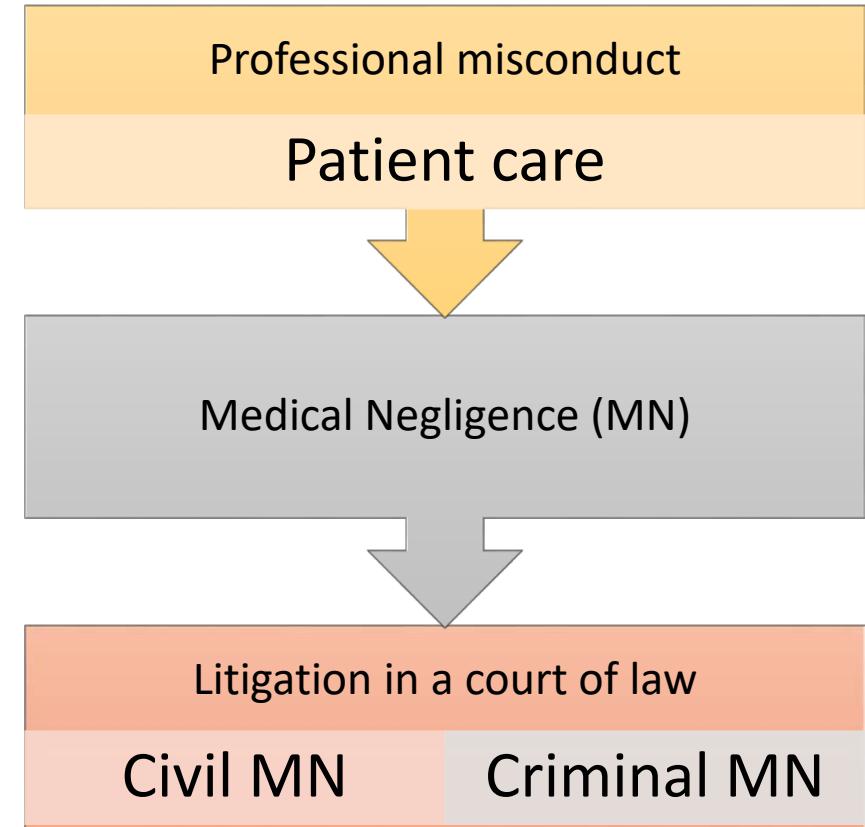
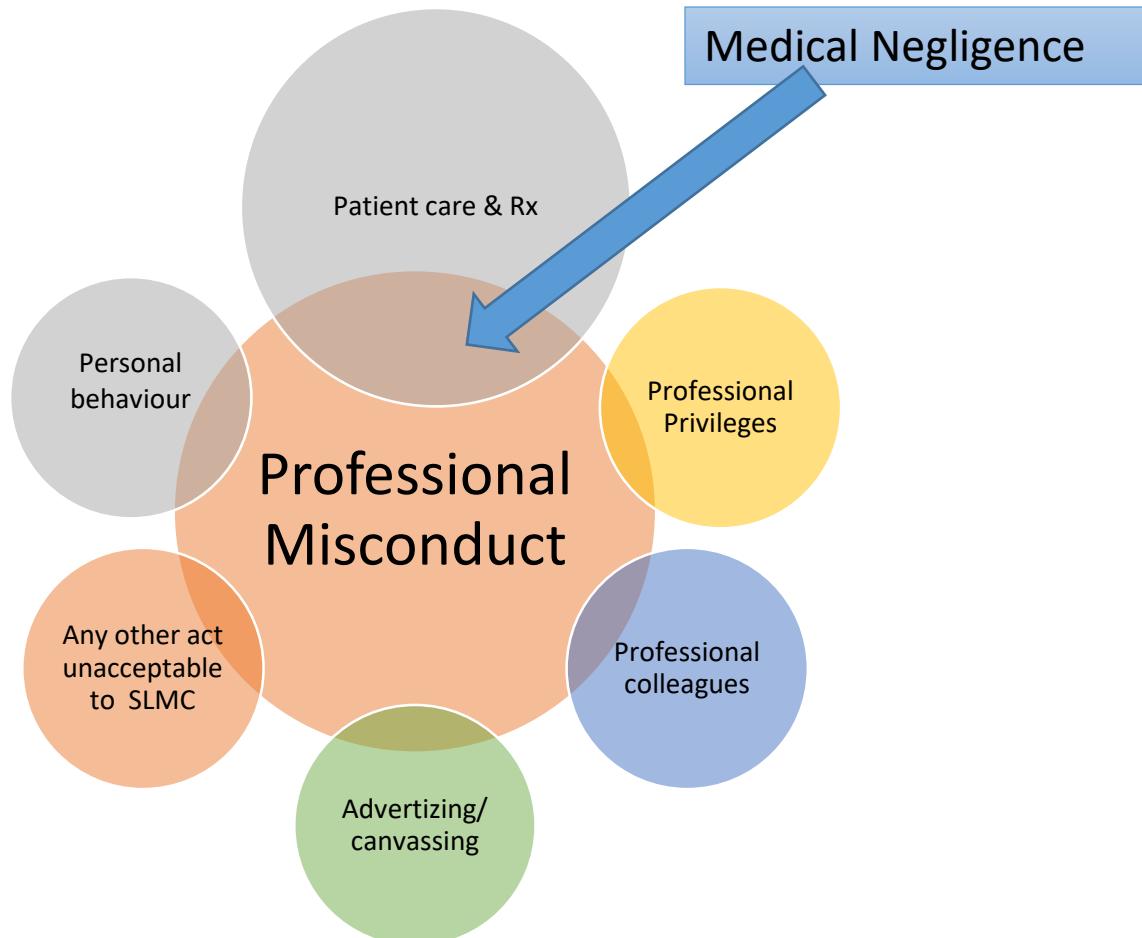
1930 Lord Justice Scrutton



Professional Misconduct



Relationship between professional misconduct and medical negligence





Patient care and treatment



Professional Misconduct in Patient Care

- Unqualified doctors :
- A medical degree that is registered in the Medical Council
- Each country is responsible and oversees the quality of the medical graduates through its medical council

Strict licensing process

In patient care the most important principle is “do no harm”





රත්නපුර රෝහලේ වෛද්‍යවරණ සංඛ්‍යාත්‍යාචාර භාම ලංකාත්‍යාචාර කිව ගිහිත

(ව්‍යාපෘති පූරිව)

රත්නපුර මහ රෝහලේ
බාහිර රෝහී අංශයේ,
වෛද්‍යවරණ 11 දෙනැනු
රාජනාරියට වාර්තා කොට
සිය සේවා ස්ථානයෙන්
බැහැර ගොස් ඇති බව
සෞඛ්‍ය අමාත්‍යාංශය
පෙරේදා (7) කළ හදිසි
වැටලීමකදී සෞඛ්‍යාගත්‍ය
ලැබේය.

රත්නපුර බාහිර රෝහී
අංශයේ සේවා ස්ථානය

කරුණිවය රෝහලේ අරඹුණා වූග්‍යා...සෙය වෛද්‍යවරණ 550 ක විරහය භාම මෙවරණ උග්‍රාධිකාරීයයේ

2005-02-02. LANKADIPA

අභ්‍යන්ත් තිරිපා: දුරක ප්‍රාතිඵල බිම



වෛද්‍යවරණ සංඛ්‍යාත්‍යාචාර විභාගවා...

මෙයින් වෛද්‍යවරණ සංඛ්‍යාත්‍යාචාර විභාගවා...

මින්නගත්වා ගොන ප්‍රාතිඵල බිම

Public expectations



Kelaniya
Medicine

Professional misconduct in Patient Care

Delegation of duties- Colleagues/ staff /
covering up of duties

Up to date knowledge in medicine (further
exams, skills & knowledge upgrade during
service, reading journals) (CPD)

- ? Revalidation of license
- Primary duty of SLMC- Protect public
- Council may institute disciplinary proceedings
 - To have disregarded or neglected professional duties or
 - Failed to visit or provide or arrange treatment for a patient when necessary
- Council is concerned with errors in diagnosis & treatment esp. when the errors are repeated
- Patients has been endangered –unsupervised practice without appropriate knowledge & skill

Professional privileges

Privileges
conferred by
law

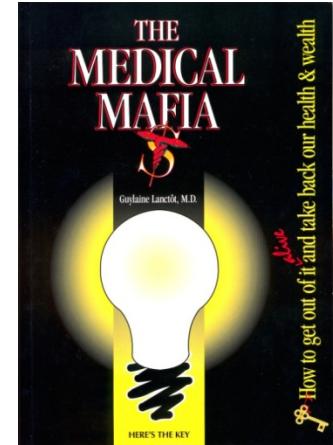
Privileges
conferred by
custom

Privileges by law



Abuse of professional privileges in prescribing

- Generic name prescribing Vs brand names
- Prescribing when not needed
- Prescribing wrong drugs
- Prescribing drugs of abuse
- Drug companies and professional conducts



Abuse of professional skills

- Using professional skills
 - Punishments
 - Torture
- Using professional skills to terminate life
 - Abortion
 - Euthanasia
- Unnecessary surgery
- Unnecessary procedure

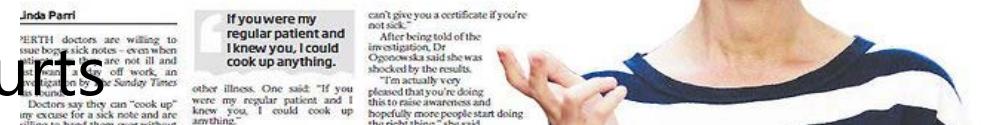


Abuse of professional privilege of issuing Medical certificates

- Certificate of leave of absence to work
 - Issuing certificates for money
 - Issuing dishonest certificates
- Certificates of leave of absence to Courts
- Death certificates
 - False certificates
- Birth certificates
- Certificate for insurance claims



Sick or not, GPs sign off



Privileges conferred by custom



Doctor-patient
relationship is unique.
Development of
personal relationships,
confidence, trust is
more not only with
patient but with family
too



Abuse of privileges conferred by customs

- Disclosure of personal information
 - › Money & wills
 - › Emotional or Sexual relationships with a patient or member of the family that disrupt the family



Representational picture

Personal behavior

Public expectation from doctors



The public expectation of the medical profession requires that every member should observe proper standards of personal behaviour not only in professional activities but in all time



Gods or Angels?



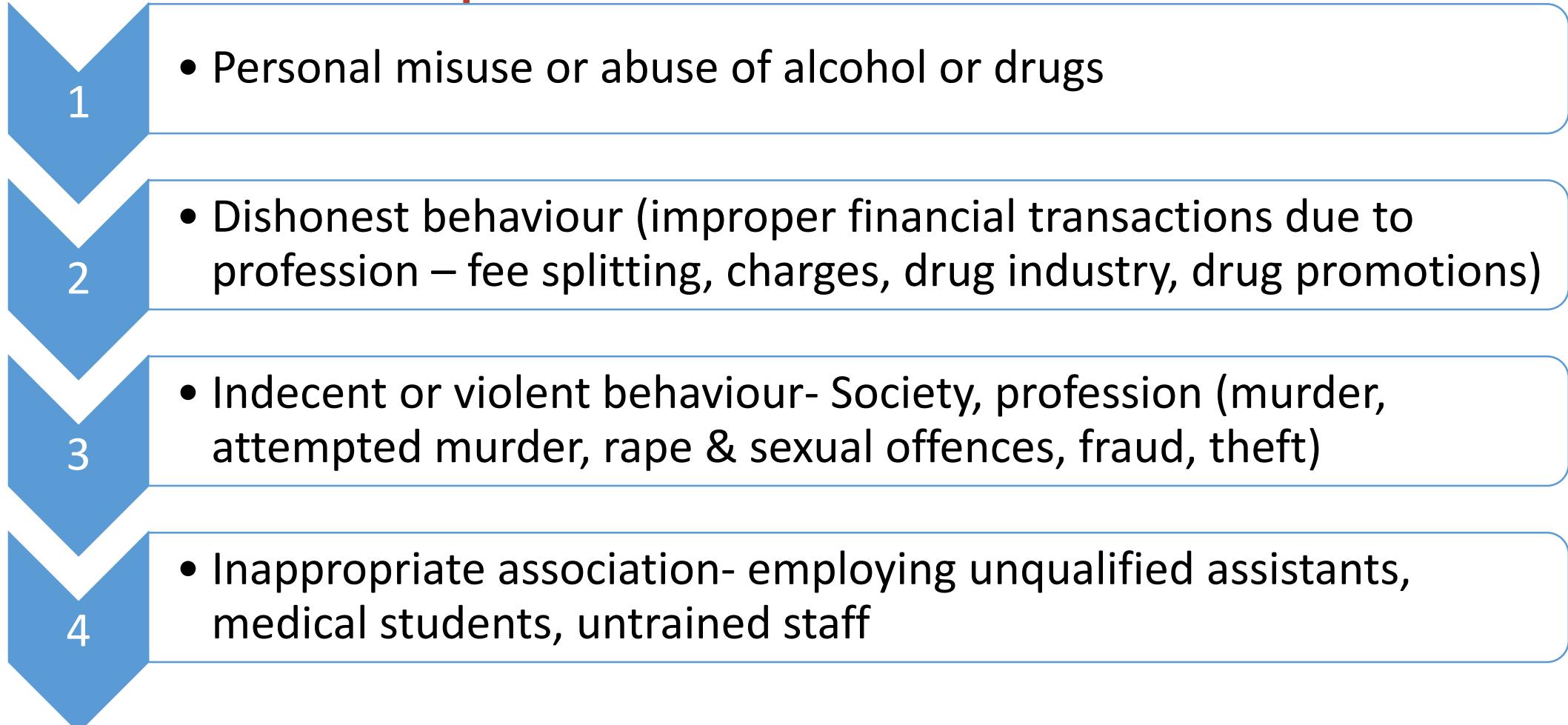
Stand out in the society with good repute
with no criminal behaviors or criminal
offences



Kelaniy
Medicir

**Conviction of criminal offences
will lead to disciplinary inquiry
even the offence is not directly
related to profession**

Criminal offences that results in disciplinary action from the profession

- 
- 1 • Personal misuse or abuse of alcohol or drugs
 - 2 • Dishonest behaviour (improper financial transactions due to profession – fee splitting, charges, drug industry, drug promotions)
 - 3 • Indecent or violent behaviour- Society, profession (murder, attempted murder, rape & sexual offences, fraud, theft)
 - 4 • Inappropriate association- employing unqualified assistants, medical students, untrained staff



SUNDAY, 30 SEPTEMBER 2018 - 19:22

DOCTOR WHO WAS ARRESTED OVER THE FATAL ACCIDENT IN BORALESGAMUWA REMANDED; INFORMATION UNVEILED THAT SHE WAS UNDER THE INFLUENCE OF ALCOHOL ☺

Boralesgamuwa accident: Police confirms lady doctor was drunk

2018-10-05 07:04:05

19680 30

DailyMirror [www.dailymirror.lk](#) [f](#) [t](#) [in](#) [e](#)



බලවන් දොශ්තර අනියම් සැමියෝක්, දොශ්තරවරය
බේරන්න රුපයේ ලොකු පුව සමග සාකච්ඡා
සුර වී පැමිණා හඳුනා මිනි මැරෑස බේබද වෛද්‍යවරය
බේරන්න සැලසුමක්



A doctor, who had allegedly raped and killed a midwife in Jaffna, was produced in Court yesterday and remanded. Hundreds of health workers staged a protest in Jaffna this week demanding the arrest of the doctor.

In September 2008, the police arrested a doctor attached to the Negombo hospital for allegedly killing a 26-year-old garment factory worker.



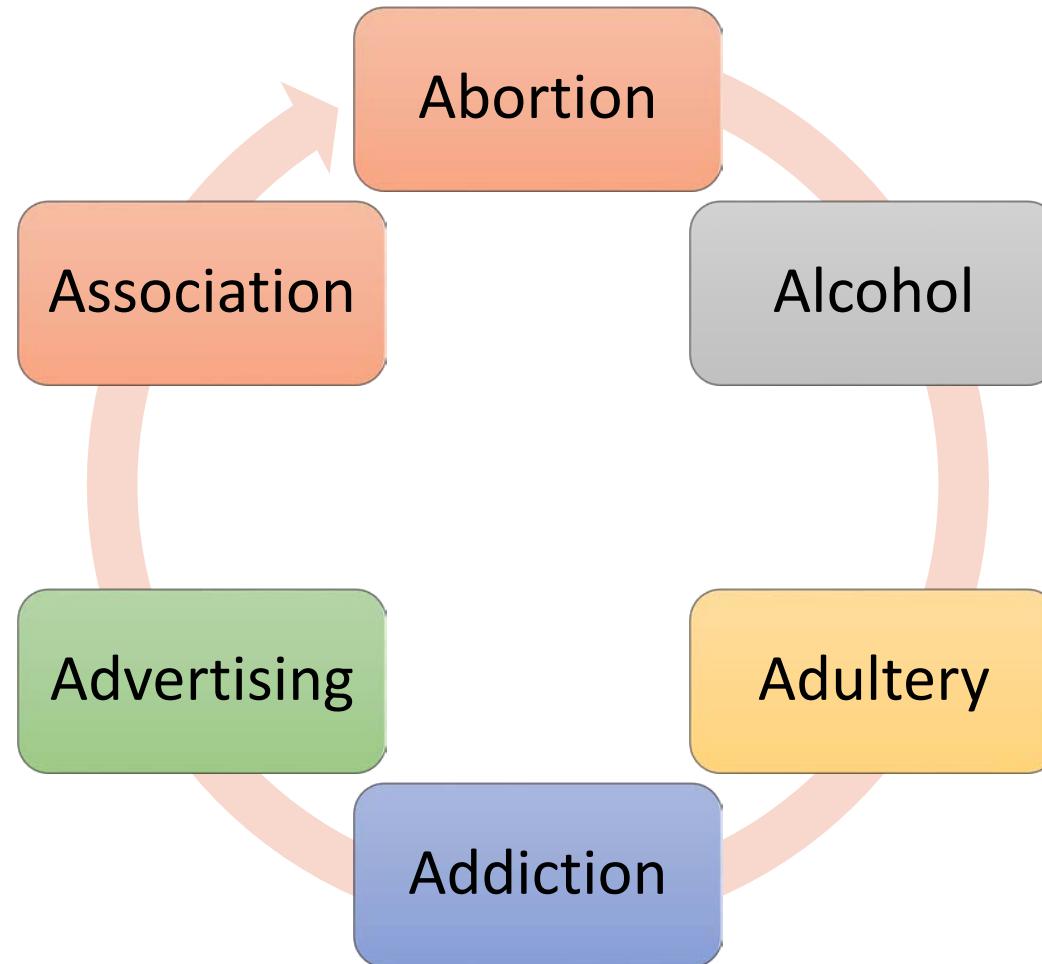
Advertising of doctors' services

- Legal, decent, honest, truthful advertising is appropriate
- No advertising like other commodities
- Name boards/ clinic boards/ qualifications
- Medical publication also should be with ethical principles
- Can participate in promotion of health- No personal glory

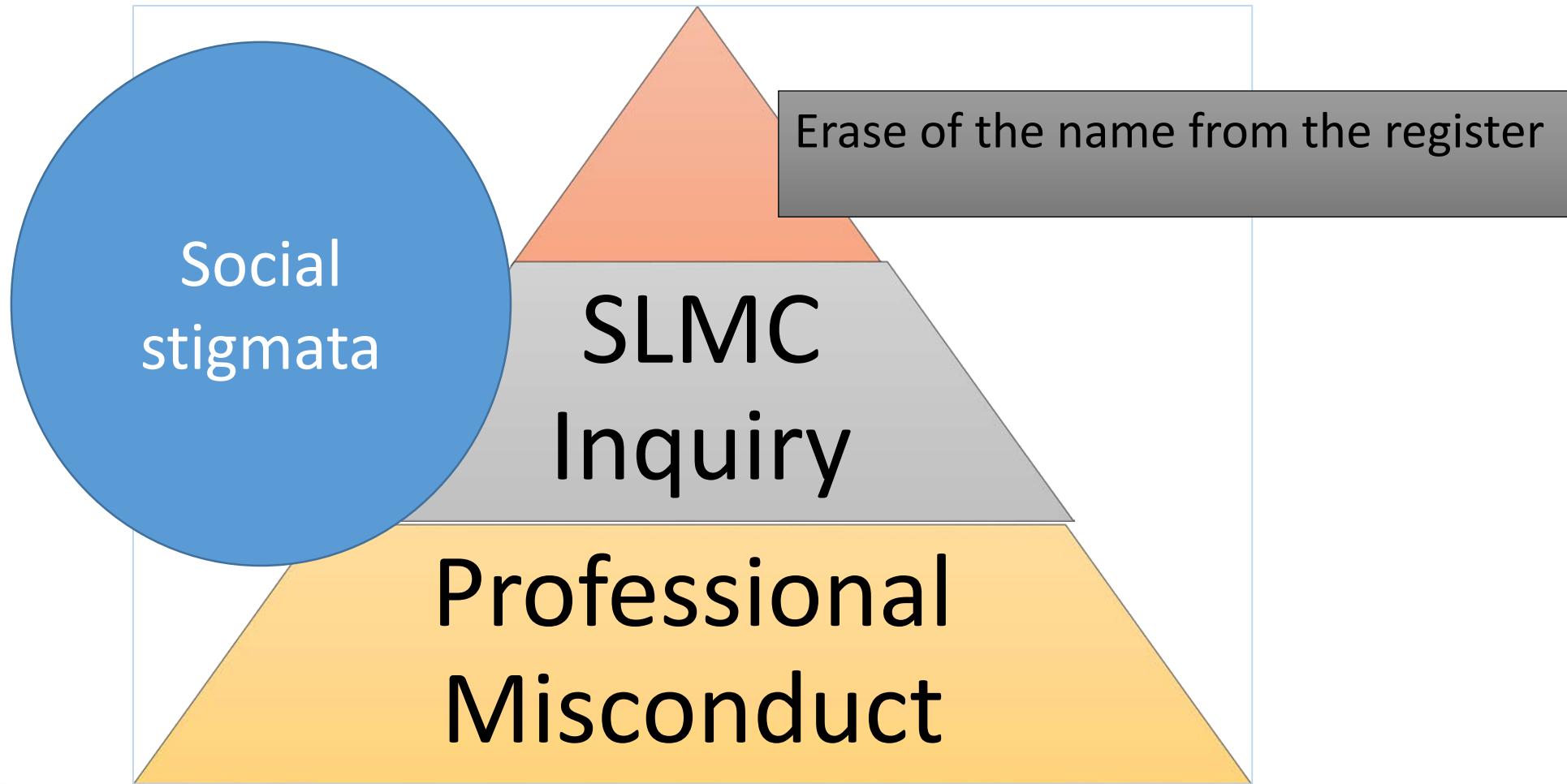
Comment on professional colleagues

- Express views about professional practice
 - Medical audits
 - Peer review processes
 - Reference about a colleague
- Second opinions for patients
- Only honest opinions
- Unnecessary criticism should be avoided

Infamous conducts- 6 A



Out come of professional misconduct



Risk factors at medical school for subsequent professional misconduct: multicentre retrospective case-control study

Janet Yates, research fellow in medical education, David James, foundation director of medical education

Conclusions This small study suggests that male sex, a lower socioeconomic background, and early academic difficulties at medical school could be risk factors for subsequent professional misconduct. The findings are preliminary and should be interpreted with caution. Most doctors with risk factors will not come before the GMC's disciplinary panels.

[bmj risk factors for medical neg case.pdf](#)



Summary

Common areas where professional misconduct can occur are patient care, personal behaviour, professional privileges, relationships with colleagues, advertising

Professional misconduct may lead to a SLMC inquiry and erase of the name from the registry





There are men
and classes of
men that stand
above the
common
herd.....

Physician the
finest flower of
civilization

R.L. Stevenson



Thank
you



Kelaniya
Medicine

Medical Negligence



බූලදුලු දුරටි ඉඩේන් ශේෂවියට අභ්‍යන්තර තුළ විරිය මියෙන්ගේ කාර්ය ව්‍යුහලයේ තොකුලුත්තුවේ

LANKADIPA 26TH JULY - TUESDAY

මරණු පරික්ෂණයෙදී සැම්යා පවතින

(වාසුදාන් එසේ සු. රෝගීන පිහුව)

පහු දුරටි එහි කළ මින්න මරණ පරික්ෂණයෙදී පානදුර සංඛ්‍යාතින් ගෝජලද විජ්‍යතා ගෙවදාවරයා සාක්ෂි දීම වෙත පෙර පානදුර භැඳී මරණ පරික්ෂණවරයා ප්‍රව්‍යාපන් වාර්තාකරුවන් ඉවත් කෙරෙනුයා.

එහි මරණ පරික්ෂණයකදී ප්‍රව්‍යාපන් වාර්තාකරුවන් ඉවත් කළ ප්‍රමාණ අවස්ථාව මෙයයි.

මුළු එන් සූදා කළේ නාරිලේද, විජ්‍යතා ගෙවදා සු. ඩී. ප්‍රජාතන්ත්‍රි රෝගීන්. මින්න සාක්ෂි දීම මරණ පරික්ෂණ යෙළුවට පානදුර භැඳී තුළ ප්‍රව්‍යාපන් වාර්තාකරුවන් අමත්තින් "මහයෙලුන් මෙමකද ඇත්තේ." දැනුවත් ප්‍රස්ථ කෙරෙනුයා.

මරණ පරික්ෂණ භැඳී වාර්තාකරුවට පිළිඳුරු දුන්නා. එහිට මරණ පරික්ෂණ මියින් අමත්තින් "කරුණාකර එමියට යන්නා" යි. වාර්තාකරුවනට යියෙනි.

රාජ්‍ය භැඳී මරණ පරික්ෂණ ඩී. ඩීලුව, අදාකාරී මහයා රෝගී මුද්‍රිතය් එම සාන්සාධී සාක්ෂිය විමැතිය.

මෙම සිද්ධියෙන් එයටින් මොරෝන්තුවේ වෙළඳුන් දීමෙන් ප්‍රකාශ රෝගීය (31) මහයා මෙයෙන් යියෙනි.



වාර්තාකරුවන් මොරෝන්තුවේ වෙළඳුන් දීමෙන් ප්‍රකාශ රෝගීය (31) මහයා මෙයෙන් යියෙනි

නරක වූ දාත ටෙනුවට තොடු දාත ගෙවා: පොලිසියට ප්‍රකාශයෙක දීමට බෞද්ධ තොත්ති

2005-02-04 LANKADIPA

(ඉතුළු රෘතියායා)

තමාගේ නරක් හි දාත නොගෙවා, හොඳ දාතක් ගෙවන ලදා පි කිරුළපන තරුණයකු පොලිසියට කළ පැමිණිල්ලක් සැලකිල්ලට ගත් මාලිගාකන්ද ප්‍රධාන මෙන්ඩන්ත් ප්‍රයන්ත ද සිද්වා, මහතා අදාළ ද්‍රාන වෙවදාවරයාට මරදාන පොලිසියට ප්‍රකාශයක් ලබාදෙන ලෙසට තොත්ති පොලිසියට නොගැඹුම් බවත්, තමාද එයට එකා වූ බවත් පැමිණින් ගෙවා ඇත්තේ.

එ අනුව 2004.8.25 දින යිනිස් එම රෝහලේ 8 වෙනි කාමරයට ගෙවාස් මෙම වෙවදාවරයාට නරක් හි දාත පොත්තු අවස්ථාවේදී එහි එයට රැන්ත්තේ කොට වෙනත් දාතක් ගෙවා නිසු බවද පැවත්තේ.

මෙලෙස තොත්ති නිකුත් කෙරුණ්න් කොළඳ දාත් රෝහලේ දාතක් ගෙවදා වෙවදා තිබූ අවස්ථාවේදී එහි එයට රැන්ත්තේ කොට වෙනත් දාතක් ගෙවා නිසු බවද පැවත්තේ.

පැමිණිලිකරු සිද්ධිය සම්බන්ධයෙන් එම රෝහලේ අධ්‍යක්ෂවරයාට උබිත්ව හා පැමිණිලි ආයතනයාට එමිතියා මෙයෙන් යියෙනි.

මෙයෙන්

මරදාන පොලිසියේ සුරු පැමිණිලි ආයතනයාට යායා මෙයෙන් යියෙනි.

දර පොලිසි රෘතියා යි. රුපසිභ මහයා මෙය උපදෙස් මක කොස්ත්‍රයේ රෘතියා මහයා පැමිණිල්ල මෙහෙයුවයි.

සිද්ධියෙන් නැවත කැදුවීම මත්තු 02 දිනට නියම කෙරිණි.

**MD 90
KUBOTA**

අත් වැක්වර

යොත්තාරිතුවුල රුඩ්බිං

යොත්තාරිතුවුල

ඊ 091 2277204/2276654

TITUS

වැරදි ලේ ව්‍යායාස්‍යක් ගිරිරගෙන වීමෙන් රෝගියන් මියයාම

රූ කෙළ ව්‍යායාස්‍ය රෝගියාගේ විරුද්‍ය ඩිඩුව චට මා තිබුණු නෑ

සිරුරට නොගැලුණෙන් ලේ දිගුන් ප්‍රාග්ධන ප්‍රාග්ධනය

ඇංතුදාය මි.ප. ඉනතාතා
“මියගේ අයත් ගිරිරයේ
රූ කෙළ ව්‍යායාස්‍ය විම සිංහ
මරණය සිදු වේ විට මා
නිගමනය කළු. එසේ
වින්දනය ගිරිරයේ පවතින ලද
විරුද්‍ය නොගැලුණෙන්
වැරදි ලේ ව්‍යායාස්‍ය ගිරිරයේ
කළ විටයි. ඇයත් ගිරිරයේ
කිමි අඩි ලද ව්‍යායාස්‍ය “උ”
පොකිරීම් වන අකර “උ.”
පොකිරීම් ව්‍යායාස්‍ය ලද
ලැබුම් සිංහ මරණය සිදු වි
ඇත් වේ විට මා නිගමනය
කළු.

මිංහාවාර්ය වන්දුසිරි තිරිඥැලු

මිංහාවාර්යවරයා මෙයේද ලේ ව්‍යායාස්‍ය ලබාදී හිතිම
පැවැසිය.
හදිසි මරණ පරිභාසක
විශේෂාල්‍යතිලක මහකාලයේ
නියෝගය මක මියමිය
ශුරුප්‍ර ආරච්ඡේ ප්‍රධාන
කුපුළාවයි තම්බුනියාගේ
පෘතිවාන් මරණ පරිභාසකය
රැඹුන්වායේ මඟයි. ඇයත්
රමුවා විනුවාගතී ඉග්‍රහාදන්
මිහැරුම් ප්‍රකාශනය දැම්ජ්
මෙය සිවියා.

2005 ජූනි මස 02 වැකිදා මුහුදායිත්තා

ඉංතුදාය

වැරදි විෂනතක දීමෙන දුරට්ත දෙනෙනු බූජ අත්‍යු විශ්චිත දුයට්ටු

වියත් කුළුවා

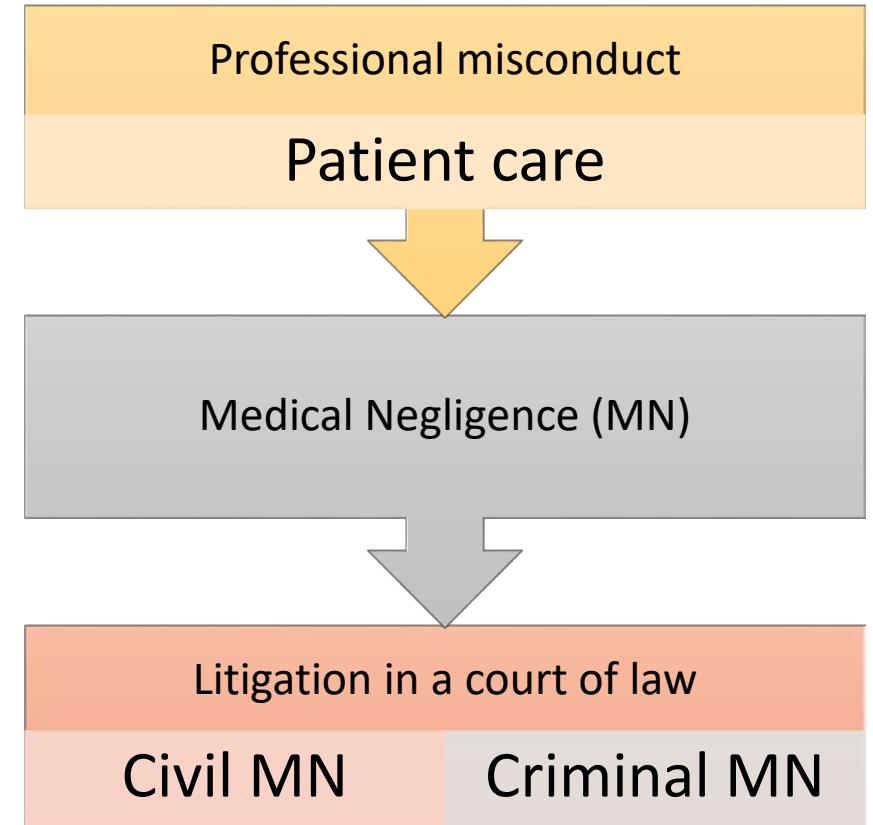
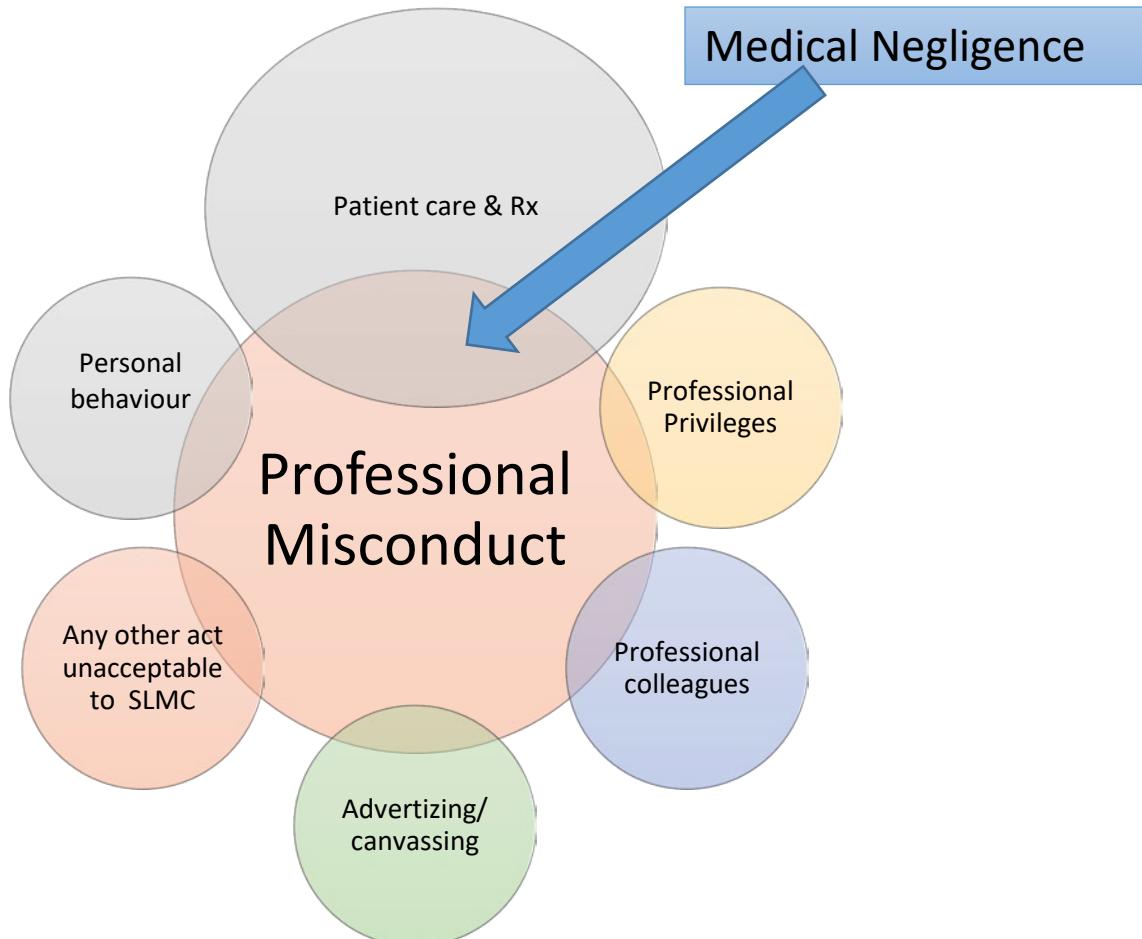
රෝගිවාන් රෝගියට
(අංකරයිටය) ලබාදෙන
ස්ථිරියෙයා එන්නකයි
ලබාදෙන් පසුව එන්නකයි
ඇංතුදාය මාංශ ගේ දියවිමි
රෝගියට ගොදුරු සූ මත්
මෙය ගොදු ගොදු ගොදු ගොදු

රෝගින් දෙනෙනු නළාවක
මූලික රෝගාලට ඇතුළත් කර
අතු. නළාවක ප්‍රදේශය මූලික
මෙවදාවය මූලික මූලික
රෝගාල් ප්‍රකාශකයෙන් “
ලාකාදීර” යට පැවැසිය.
මම එන්නක ලබාදුන්
මෙවදාවය මූලික මූලික

දෙනෙනෙනුට ඇදුම රෝගය
සදා මෙම එන්නක ලබාදී
අඩි බව පරික්ෂණවලදී
හෙළිවා ඇතුළු නළාවක මූලික
අයකාව මෙම එන්නක ලබාදී
අඩි බවන් පැවැසිය.
මම එන්නක ලබාදුන්
මෙවදාවය රෝගින් මෙම

රෝගින් ලබාදීම ඇංතුදාය
නැවත් එන් රෝගියෙනු මෙම
සිද්ධිය පිළිබඳව ගැනීම
අම් න් න් න් න් න් න්
පැමිණිලියකට අඩි බව එ
උකාංකායා වැශ්චිත
උවාදාවය රෝගියා

Relationship between professional misconduct and medical negligence

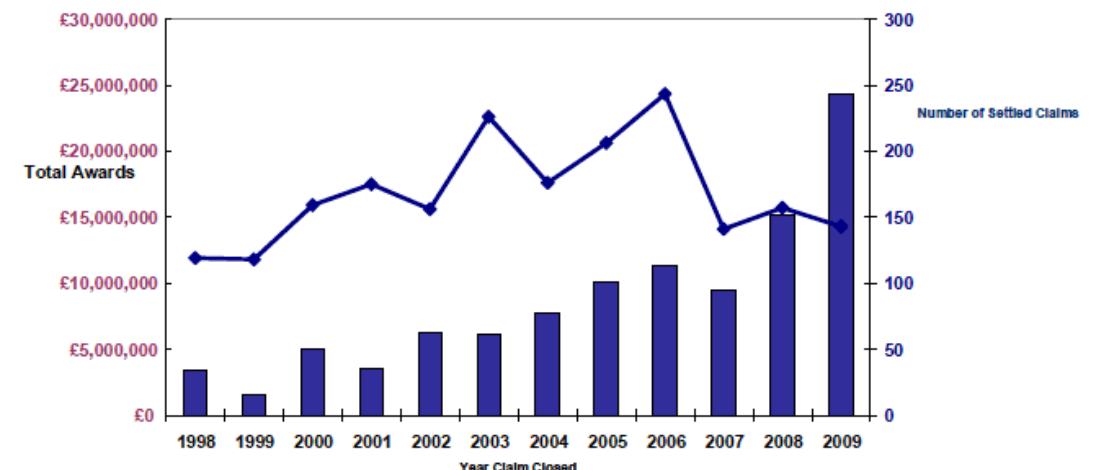


Medical negligence & growing concerns

- Not only a medical issue but a political issue
- Statistics are alarming ! UK “one in every 10 patients admitted to NHS hospitals is unintentionally harmed”
- Successful litigations are low (13%)
- Compensations and legal costs are very high
- Doctors demoralized over-causes and practice of defensive medicine
- Culture of consumerism & media reporting
- Intolerance of error – somebody should be accountable-for-everything-culture



Settled Claims 1998 - 2009
Number and Total Awards



Study from Scotland

Negligence definition in law

Committing an act which a prudent (විවක්ෂණ, දුරදරු) and a reasonable (සාධාරණ) man would not do or omission to do something what a prudent and reasonable man would do

Negligence in General Tort Law

- Accepted way of doing things in medicine if not done (Not doing something which is supposed to do or doing some thing which is not supposed to do (driving a vehicle while red light are on))
- Results damage (accident)
- Responsibility of the damage should be taken by the doctor (Compensation/insurance)



Medical negligence definition

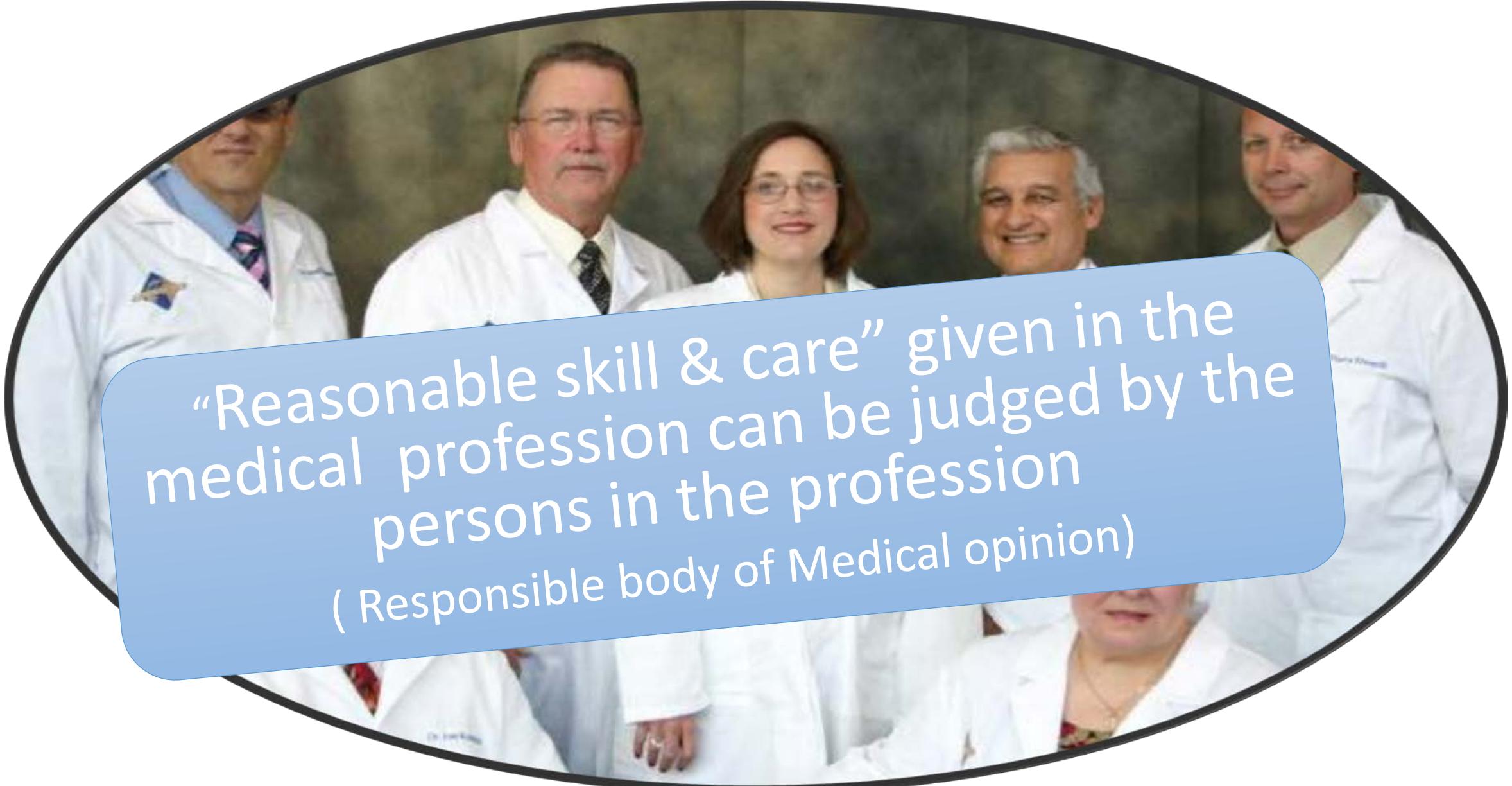
Breach of duty of care (**reasonable
සාධාරණ දේහ සහ පෙරීම**)
degree of skill and care)
towards a patient which results in, by
an act of commission or omission,
causing damage to a patient by way
of causing injury, suffering or death



"Reasonable skill & care"

"Another of the same standing would have done under similar circumstances"

- Depends on knowledge & circumstances(where, when, with what)
- Knowledge varies according to the status
 - Eg: House Officer, Registrar, surgeon
- Knowledge must be updated according to his status
- Must undertake only what is within his knowledge & experience
- Doctor working in a peripheral hospital with poor facilities Vs teaching hospital
- Doctor working under normal conditions “routine” and emergency



“Reasonable skill & care” given in the
medical profession can be judged by the
persons in the profession
(Responsible body of Medical opinion)

The ‘Bolam’ test/ principle 1957 (Reasonable skill & care)

- Mr Bolam was a patient at mental health institution (Friern Hospital Management Committee). He agreed to undergo electro-convulsive therapy. He was not given any relaxant drugs, and his body was not restrained during the procedure. He suffered fractures of the lower limbs including acetabular fracture. He sued the Committee for compensation. He argued they were negligent for (1) not issuing relaxants (2) not restraining him (3) not warning him about the risks involved.
- “A doctor is not guilty of negligence if he acted in accordance with a practice accepted as proper by a responsible body of medical opinion”

In Plain English what “Boalm Test” means

- In a case of medical negligence that there is no breach of standard of care if a responsible body of similar professionals support the practice that caused the injury.
- A doctor often has more than one choice in treating including how to (or whether to) treat or not
- Even if the doctor chose the least popular of these choices, it was did not necessarily amount to medical negligence if support could be found for it.

Criticism Vs of good ‘Bolam Test’

- Too protective of doctors
- Judges not permitted to choose between competing expert views
- “Responsible body” not defined
- A sociological rather than a normative framework
- Accepted skill & care of medical profession can only be decided by medical men
- There are many ways as considered as accepted
- Even a new innovative & minority opinion is protected

The Bolitho Test

- Bolitho v City and Hackney Health Authority (1997) - a Case from UK
- Doctor failed to examine and intubate a child with respiratory distress
- Defendant's own expert witness – said non-intubation is clinically justifiable response
- Court departed from traditional "Bolam"
- Judge said the court must be satisfied that the body of opinion in question rests on logical basis.

The new stand is

In deciding medical negligence the courts may not rely on medical profession like the earlier era but may listen to different schools of thoughts and apply its own principles of logical reasoning with judicial perspective, where it creates room for compensations

Different schools of care, New developments Vs reasonable degree of care 1953- 1998

- Crawford v Board of Governors of Charing Cross Hospital [1953], Anesthesia and brachial palsy- vs article in Lancet 6 months ago
- Lord Denning “Too High a burden on a medical man to say that he has to read every article appear in the current medical press and it would be quite wrong to suggest that medical man is negligent because he does not put them at one to operation.
However Once improvements become known, they may not be ignored, Specialists must keep abreast of developments in their field” .

- Radiotherapy in cancer treatment in 1980s cases decided in favor of claimants
- It is the clinician's duty to keep up-to-date and damage and breach can be established for a successful lawsuit where the clinician has failed to meet the standard required.
- The reason for certificates of CPDs, "Revalidations" of license by medical councils

4 criteria to be satisfied in establishing Medical Negligence

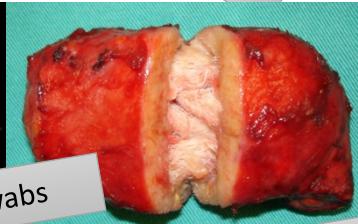
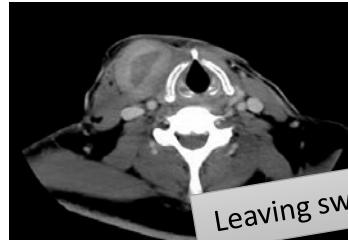
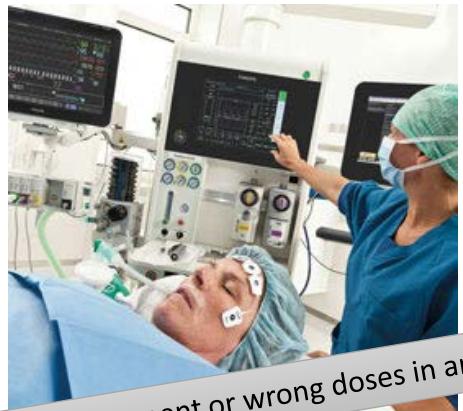
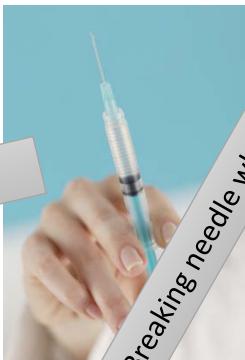
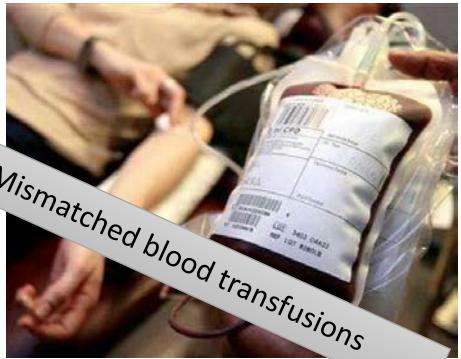
Duty of care (doctor-patient relationship)

Breach of duty of care by an act of commission or omission

Damage or harm to patient

Causal link between harm and breach of duty of care has to be proven

Circumstances/examples where medical negligence results in



Duty of care

- The duty of care arise out of doctor- patient relationship
- 1st has to establish that there is a doctor-patient relationship
- If the care is given by the hospital doctors and the staff is also liable vicariously for the duty of care
- If a Locum is done in GP Practice doctor who did the locum as well as the GP and his staff is liable

- The duty of care does not depend on whether a payment is made or not (doctor-patient relationship)
- Commence once a patient is accepted by the doctor to examine, investigate, diagnose & treat
- Once a patient is accepted he cannot abandon the patient or refuse to treat
- If the doctor does not like to continue to treat he should give sufficient time to find another doctor- till then he has to treat
- The patient has the right to break the doctor patient relationship at any time

Duty of care special situations

- Emergency situations
 - Doctor has a moral duty/humanitarian grounds to treat persons in emergency
 - ? Sued for negligence
- Special situations (Therapy is not involved)
 - Medico-legal examinations- done for request by a third party
 - Examinations for insurance
 - Compensations

Breach of duty

- Breach of duty(care) means doctor failed to meet the required standard care
- Failure to exercise reasonable degree of skill and care
- Due to an act of commission or omission
 - Acts of commission
 - Leaving instruments, swabs, inside the body cavities after operation
 - Operating on wrong side
 - Acts of omission
 - Not attending to a patient
 - Not monitoring

Situations where breach of duty occurs

- Diagnosis & treatment
 - Taking a full history
 - Conducting a through clinical examination
 - Relevant investigations when indicated
 - Refer the patient where necessary–
 - 2nd opinions
 - Obtaining Consent
- Failure to obtain valid informed consent for treatment
 - Non disclosure of all possible complications may not constitute negligence (Sidaway case)

Wrong diagnosis/ misdiagnosis, failure to diagnose the obvious & delayed diagnosis

- Misdiagnosis or failure to Diagnosis of MI or Appendicitis can lead to death
- Failure to diagnose or delayed diagnosis of Cancer of the breast, rectum or lung can lead to poor outcome in long term
- Still it may not be considered as medical negligence if proper steps have been done in history taking, examination, investigations, referrals

How misdiagnosis can occur

- Diagnosis made without proper examination, diagnosis over the telephone, diagnosis made by listening or going through some investigations can result misdiagnosis where person can be found negligent
- If a doctor is doubtful of the diagnosis specialist referral or 2nd opinion has to be taken
- Failure to carryout relevant investigations resulting failure to diagnose and illness or make wrong diagnosis Arsecularatne V Priyani Zoysa 2000

Medical errors/Mistakes/ Misadventures

- medical mistakes do happen mainly because medical professionals are humans too
- Medical errors classified as
 - Adverse Drug Events-over dose, wrong drugs,
 - Hospital Acquired Infections
 - Surgical Mistakes.- leaving equipments, swabs, operating wrong site, wrong patient etc
- **Medical errors go hand in hand with overcrowding, overworked staff and cost cutting**

Medical Mistake my own experience

Medical Mistakes that cause litigations

- Gross medical mistakes – always result in finding negligence
- removal of wrong limb, surgery on the wrong person, using wrong drug, instrument being left inside.
- some of these situations **“Res Ipsa Loquitur”** principle

Res ipsa loquitur

- plaintiff occasionally have to recourse to this doctrine “ Facts are so obvious” you do not have to prove any thing
- The defendant has to explain how it happened
- If he cannot rebut this inference the plaintiff will have negligence of defendant

My own experience of “Res ipsa loquitur”

My experience : Cause of death

1(a)	Head, neck and chest injury Due to
1(b)	Blunt force impact, (Injury pattern is compatible with impact with a moving vehicle)

Two weeks later the Director of the hospital received an order from the Magistrate

To send a report on whether medico-legal examination was done while the deceased was alive
whether he received proper treatment for his injuries

Causal relationship

- In duty of care and damage, the plaintiff (patient/relative) must prove that there is damage by calling witnesses, medical or otherwise

Damage

The damage caused can be

1. Injury-physical, mental or financial (expenses) , loss of earnings, reduced employment
2. Death

Issues on medical negligence litigation

- Cost of litigation very high
- Gathering evidence for the plaintiff is difficult
- Doctors may not come forward to express opinions against their colleague
- Medical negligence present compensation may not be given
- Painful long process for both parties
- No fault system – of New Zealand, Sweden, Norway, Finland

Defenses available to a doctor

- Volenti non fit injuria- concept of informed consent
- Delegation of duty
- Vicarious liability- Hospital- working hours, over work, sleep deprivation
- Contributory negligence by the patient

Problem of Novice & responsibility of the hospital who employs him

- The degree of expertise of doctor – depend upon his experience
- There had been an argument – standard expected of newly qualified doctor should be less than that expected from an experienced doctor. The law do not regard this.
- The court needs an objective standard.
- The novice should show the degree of standard expected from a reasonably competent doctor.

Effects of medical litigation

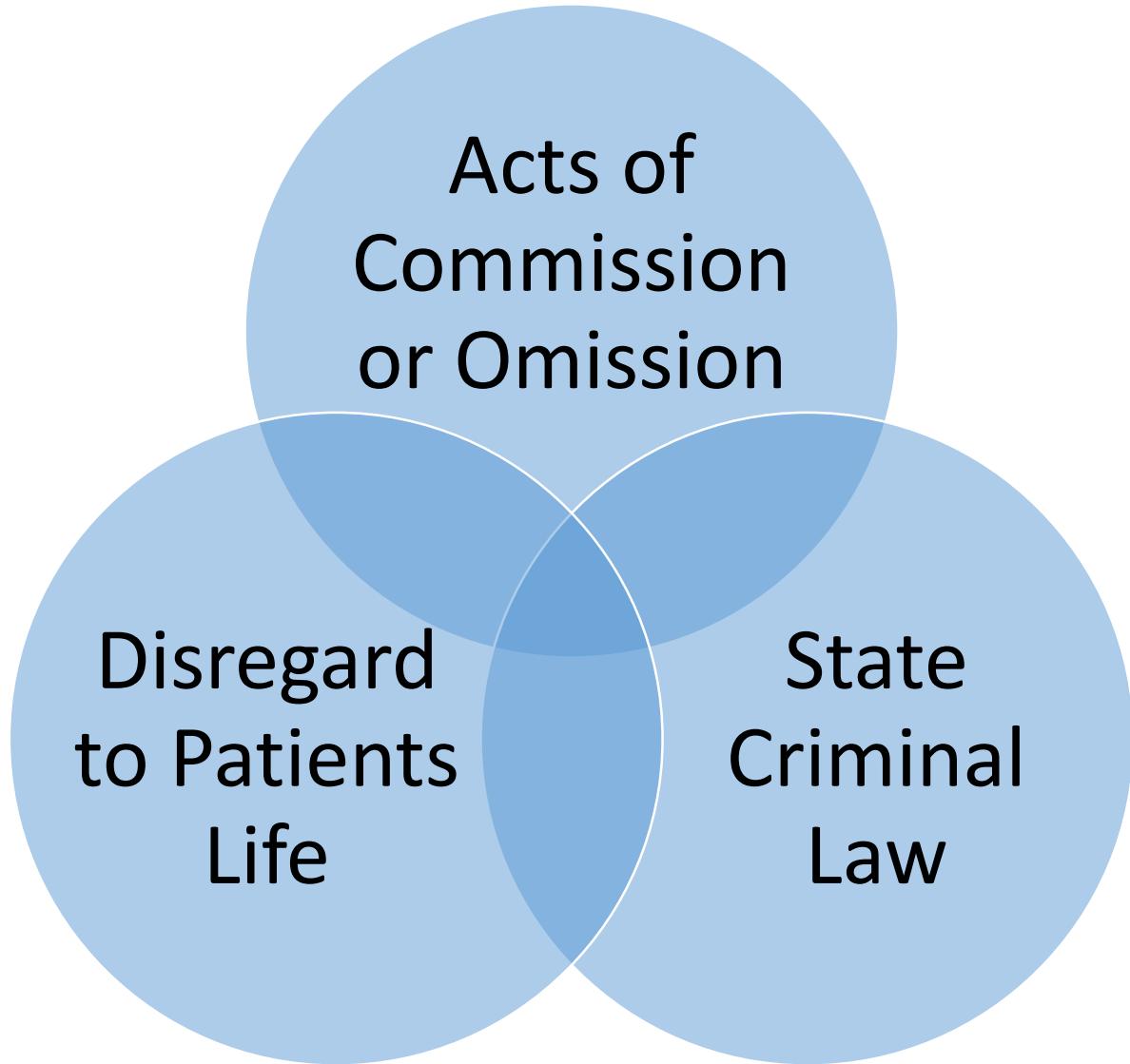
- Defensive medicine
- Few doctors willing to practice 'risk of litigation specialties' –eg. OBS & Gyne, Surgery
- Doctors unwilling to undertake patients in private sectors
- Medical Insurances for doctors increase, thus the fee for the patient also increased
- Detrimental effect on innovative medicine

Criminal Negligence



Criminal negligence

- Medical negligence is predominantly a civil matter
- However, in certain types of negligence the doctor may be prosecuted by the state in order to protect the community and punish him
- Treatment given is grossly negligent as described as reckless, wicked or showing disregard for the life and safety of the patient, and if death occurs, the doctor is charged for manslaughter



Sri Lankan Law- 298 Penal Code

- Whoever caused the death of any person by doing rash and negligent act not amounting to culpable homicide shall be punished with imprisonment either description for a term which may extend to 5 years or a fine or both.
- The standard of proof required is “proof beyond reasonable doubt as in any other criminal trial.

Sri Lankan Law- 298 Penal Code

- There are 2 situations where a person's life can be exposed to danger
- *Subjective recklessness* – The danger is obvious to the accused. But he takes the risk. " I knew the risk of harm but did not care"
- *Objective Negligence* – accused unaware of the any risk at all – damage caused may have been the result of incompetence or ignorance

Differences between Professional negligence and Professional Misconduct

Professional Negligence	Professional Misconduct
It concerns duties of a medical man towards his patient	It concerns violation of codes and ethics of medical practice
There should be dereliction of duty in treatment causing damage to patient	There need not be dereliction of duty and damage to patient
Charges are brought before the court of law	Charges are brought before Medical Council
May be punished by imprisonment or compensation or both	Name of the doctor in the register will be erased and will not be able to practice
Appeals are lodged in Higher Courts	No involvement in Courts

Difference between Civil and Criminal Negligence

Feature	Civil Negligence	Criminal Negligence
Offence	No specific or clear violation of law	Specific violation of a particular law
Negligence	Simple absence of care and skill	Gross negligence, inattention or lack of competency
Conduct of a Physician	Compared to generally accepted standard of professional care	Not compared to a single test
Consent to act	Good defense in court of law cannot recover damages	Not a defense: can be prosecuted
Trial	Civil Court	Criminal Court
Evidence	Strong evidence is sufficient	Guilt should be proved beyond reasonable doubt
Punishment	Damages to be pain	Imprisonment

Summary

- Negligence means committing an act which a prudent and a reasonable man would not do or omission to do something what a prudent and reasonable man would do under the existing circumstance
- To prove medical negligence 4 criteria has to be fulfilled.
 - Duty of care
 - Breach of duty of care by an act of commission or omission
 - Damage to the patient by the act of commission or omission
 - Causal link between damage & breach of duty of care
- Breach of duty of care- reasonable skill & care is assessed by a responsible body of a medical opinion- Bolam Test
- Bolitho test deviate from Bolam where courts can take many views of responsible body and decide the case by applying logical principles

- Misdiagnosis or wrong diagnosis may not amount to Medical negligence if they are conducted accordance to normal practice
- Medical mistakes, medical mishaps may not amount to medical negligence if it is a human error of judgment
- In medical negligence some times the facts speaks for it self
“Res ipsa loquitur”
- In a medical negligence burden of proof is with the plaintiff
- The defenses available to doctor are vleni non fit injuria, delegation of duty , vicarious liability and contributory negligence

Further reading

1. <http://www.gmc-uk.org/>
2. Basic Principles of Medical Negligence by Prof. Ravindra Fernando & Dr. L.C. De Silva
3. Guidelines on Ethical conduct for Medical and Dental Practitioners registered with the Sri Lanka Medical council –SLMC
4. Law & Medical Ethics-5th Edition, JK Mason, RA McCall Smith GT Laurie



Good Medical
Practice

General
Medical
Council
Regulating doctors
Ensuring good medical practice



There are men
and classes of
men that stand
above the
common
herd.....

Physician the
finest flower of
civilization

R.L. Stevenson



Thank
you



Kelaniya
Medicine