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## Doctor and Law- Part II

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Medical and Legal Professions are closely related since the inception of the society. Medical knowledge has always assisted judiciary in solving civil and criminal problems with the help of scientific knowledge acquired from time to time by medical world.

### **Accountability of doctors**

1. **General law and doctor:** For any civic wrong and crime all the Laws applicable to any citizen are applicable to doctors also.
2. In professional capacity as a doctor he would be accountable under the following circumstances.
  - a. *Ethical accountability:* would consist of following the code of conduct and ethics
  - b. *He would be required to help justice as an expert witness,* e.g. Accident cases, matrimonial cases where doctor would be required to opine for validity of age, potency, sterility, sexual offences, mental illnesses etc.
  - c. *Professional accountability:* Doctor is required to register with concerned medico-legal council, ayurveda, allopathy, homeopathy etc.
  - d. Doctor is also required to follow labor laws, income tax act, nursing home registration etc. while practicing.
  - e. *Laws and statutes under which doctor can be sued as accused:* Section 88 to Section 93, Section 312 to Section 315.

In majority of the cases, doctor has to defend himself by proving that he has not been medically negligent while treating his patient. Any doctor owes to give reasonable degree of care while treating his patient.

### **Duties of a doctor :**

#### **1. Duty towards his patients:**

- a. To exercise a reasonable degree of skill and knowledge regardless of payment of fees.
- b. To attend a case till the patient requires the care provided by the doctor and doctor should not withdraw from it without giving sufficient notice to the patient to make alternate arrangements.
- c. As far as possible, attempt should be made to cure element of illness but if it is not possible, at least always a relief from the element of illness be the minimum aim.
- d. As and when needed, doctor should ask the necessary investigations/opinion from other specialists.
- e. To inform the patient in normal circumstances, the nature of his illness and various modes of treatment and detail of the present treatment selected by the doctor with pros and cons
- f. Professional secrecy should be maintained while and after the treatment is over. However doctor is required to notify the dangerous diseases to the concerned authorities in the interest of the society.
- g. While treating the patient sex, race, religion, nationality should not be considered by the doctor.

### **Professional services of Physicians to each other :**

1. A doctor ought to behave to his colleagues, as he would have them behave towards him.

2. A doctor must not entice patients from his colleagues.
3. A doctor must observe the principles of the "Declaration of Geneva" approved by the World Medical Association.

### **CPA 1986 (AMMENDED, 1991 AND 1993)**

Before the CPA was enacted (1986), patient as a consumer had only three avenues for redressal of his grievances 1. Civil courts 2. Criminal courts 3. Medical council. The inordinate delays and work loads at civil and criminal courts have resulted in denial of justice to the consumers. The third avenue i.e. medical council seems to have helped little to the patients. These councils themselves have faced charges of corruption and dysfunction. These councils have no power to overcome these problems. To some extent it did so but future of consumer courts with the current pace of their functioning is likely to be that of other courts. Thousands of cases are pending all over the country and expectation and purpose of speedy justice within 90 days seems to have got completely.

There are variable contentions and judgements as to whether doctors are under purview of CPA or not. In 1994 Madras High Court had ruled and excluded doctors from purview of CPA. All these were put to rest after the 1995 Supreme Court judgement and doctors now have no excuse but to face CPA.

### **FUNCTIONING OF CONSUMER COURTS**

It is a three-tier system and consists of District forum, State Commission and National Commission. They are presided by acting or more commonly retired civil court judges of respective levels.

Consumer courts are quasi-judicial bodies and they are not laws by themselves. They are under administrative control of ministries looking after consumer affairs, unlike other civil courts. Appeals are allowed within 30 days after decision at appropriate higher consumer court or Supreme Court in case of National Commission. Their decisions are subject to review by appropriate civil courts if need arises. They do have powers of civil courts for better implementation of Act, i.e. summons to defendants, service of summons, power to order discovery, summons to witnesses, penalty for default, and orders to file affidavits.

There is no court fee or stamp duty.

The burden of proving negligence is on the patient (consumer). Failure to reply by opposite party can lead to ex parte hearing and adjudication.

At the time of appeal, the ordered compensation needs to be deposited with the court.

The financial limits depending on the claim are now revised as follows, District forum - upto Rs. 5 lakhs, State Commission – between Rs. 5 lakhs and Rs. 20 lakhs and National Commission - more than Rs. 20 lakhs. Maximum compensation to the opposite party in case of false complaint is Rs. 10000/-.

### **PROBLEMS OF EXISTING SYSTEM**

1. Under administrative control of ministries of consumer affairs so not independent bodies and are quasi-judicial.
2. No stamp duty so number of false complaints is on rise.
3. Inadequate personnel and infrastructure in general all over the country.
4. Failure to cope up with the workload.
5. No time limits for disposal of appeals or revision petitions.
6. Lacunae in the Act itself leading to ample place for discretion.
7. Detailed trials may not be possible.

### **CPA AND MEDICAL PRACTICE**

Have consumer court judgements affected medical profession ? Yes. Over last 12 years since enactment of CPA 1986, there have been few thousand cases against doctors all over the country. Medical practice is becoming more defensive and has resulted in higher costs of management. What Lord Denning quoted 40 years back has started happening. Doctors are now

trying to protect themselves first and then think of patient management. Bigger Institutes seem to have been affected very badly and so also the doctors working there. Being tertiary referral centers, all complicated problems need to be tackled and most of the cases then become potentially litigious. Burden of additional investigations, record keeping and cost of involvement of more than needed specialists in the patient management is mounting, ultimately leading to added suffering of patients and doctors.

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