

PROFESSIONAL AND LEGAL DUTIES OF AYURVEDIC PHYSICIAN

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ABSTRACT

Ayurveda is most commonly practiced form of complementary and alternative medicine (CAM) in India. The history of the physician legal duties has been traced from the first recorded writing of Babylonian era to the present day. There has been a transition from the days of absolute liability to the modern idea of liability based on culpability. Broadly, if a physician renders reasonable care and skill, he is absolved from liability. Physician plays an important role in health care delivery system. Every registered medical practitioner has to perform some medico legal duty during discharge of his/her duty. Legally the physician duty to explain is derived from the doctrine of informed consent and the physician duty of disclosure. Thus because the explanation to the patient is legally required. An inappropriate or inadequate explanation is breach of duty of disclosure.

KEY WORDS: Physician, *Vaidya*, jurisprudence, medico legal, negligence, IPC, patient.

INTRODUCTION

Every registered medical practitioner has to perform some medico legal duty during discharge of his/her duty. In the emergency room, they have to make injury report in all unnatural cases. If he fails to discharge this duty he may be charged under various section of IPC along with punishment.

In addition during examination of the cases a male /female attendant should be present for a male patient and a female attendant for female patient. Next in ward doctor is to examine the case very carefully and treat the patient with a reasonable degree of skill, care and knowledge to avoid charge of negligence.

1. Consent means voluntary agreement; compliance or permission, when a patient is coming to a doctor for treatment the consent is implied. There is no need of taking

written consent. But in some special cases written consent is required. In criminal cases, poisoning cases, rape cases, the victim and the accused cannot be examined without his/her written consent. Different consenting ages: for medico legal examination 12 years and above, for sexual intercourse 16 years and above.¹

AIM

To make aware about legal duties of physician while delivering a medical care or treatment in clinic or in a hospital set up.

In Ayurveda, *Aacharya* has mentioned about qualities and duties of *Vaidya* (Physician) regarding treatment of patient. *Ashtang sangraha* has given four qualities of physician while delivering medical care. Those are; 1) *Daksh*- alertness, 2) *Tirthatshatrarth*- physician must have knowledge obtain from guru (teacher), 3) *Drushtkarma*- must have experience of

treating patient, 4) *Shuchi*- should maintain hygiene externally and internally as well.² *Aacharya charak* has mentioned about Fourfold attitude of physician those are: 1) *Maitri*- Friendly relation with the patient, 2) A good and kind behavior towards patient or ill people, 3) A good nursing care should be there while treating the patient, 4) Good counseling to the patient or relative, when patient is in untreatable condition.³

PROFESSIONAL DUTIES –

According to Supreme Court of India, a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose.⁴

Such a person when consulted by patient owes him certain duties viz, a duty of care in deciding what treatment to give or a duty of care in administration of that treatment.

1. Treatment of patient is implied contract.
2. Duty to examine patient properly with prior verbal or written consent.
3. Examination of female patient with consent of patient or relative in presence of female attendance of hospital or clinic.
4. Duty to earn confidence.
5. Right to choose patient.
6. Duty to give proper direction or guideline to patient regarding treatment and disease both.
7. Duty to notify communicable disease.
8. Duty to obtain the consent of the patient before attempting surgical treatment and in the case of minor the parent's consent must first be obtained.

2. DUTY TOWARDS COLLEAGUE:

1. Extend same honor, respect and good behavior expected from them.

2. Should not do or utter anything to lower down the name of colleague.

3. Should not entice patient from colleague.

4. Free medical service to fellow colleague.

A breach of any of those duties gives a right of action for negligence to the patient.

NEGLIGENCE OF DOCTOR:

It is careless conduct without reference to any duty to take care.

E.g. negligence is a quack treating a patient.

Negligence means breach of legal duty to take care.

Consequential damage.

Under consumer protection act if the plaintiff proves that the doctor is negligent but fails to prove loss or damages then he will not entitled to claim compensation.

DUTY NOT TO EXPERIMENT-

It is a physician's legal duty to follow the accepted method of practice prescribed by his profession.

If the physician wishes to avoid civil liability, he must employ in the treatment of patient, methods which are recognized and approved by his profession as most likely to produce favorable results.⁵

DUTY TO REFER ANOTHER PHYSICIAN –

If a physician is consulted by patient with regard to a disease which he has not the skill and knowledge to treat, it is his legal duty to so inform the patient and to suggest service of another physician.

DUTY TO GIVE INSTRUCTIONS TO THE PATIENT-

It is legal duty of physician in dealing with a case to give the patient all necessary instruction applicable to the diagnosis, so that patient may have better understanding of ailments and thus patient has a right to

know the treatment and obtain second opinion about his treatment and if he wishes has a right to obtain alternative forms of treatment. Doctor should honor the right of patient.

3. ACCEPTED PROFESSIONAL PRACTICE:

The doctor should always remain updated with current day's practices trend and always upgrade himself through various seminars, CME, medical conferences because of he /she must give patient a proper line of treatment as per practice adopted by other competent medical practitioner at that time.

CONDUCT AND ETIQUETTE:

Practitioners of Indian medicine (Standards of professional conduct, etiquette and code of ethics) regulation, 1982.^{1,6}

CODE OF ETHICS

- 1) Advertising.
- 2) Nomenclature of qualification- It shall be compulsory for a practitioners of Indian medicine to affix the correct degree or diploma before or after his name.
- 3) Rebate and commission.
- 4) Professional certificate, reports and other documents.¹

SELF PREPARATION OF MEDICINE

- 1) No manufacturing license required.
- 2) Marketing.
- 3) Distribution.
- 4) Overseas supply

THE CLINICAL ESTABLISHMENTS ACT

Registration and Regulation Act, 2010

The act is for the registration and regulation of the clinical establishment in the country and for matters connected there with.

Act passed by parliament in Aug 2010 and notified on 1st march, 2012.^{7,8,9}

INSURANCE AND AYURVEDA:

The insurance regulatory and development Authority (IRDA) has issued a notification informing the inclusion of Indian system of medicine in the mediclaim insurance policy, as per the notification, the insurance coverage to AYUSH treatments has been facility through the regulation 5(1) of the IRDA (Health insurance) Regulation, 2013.

4. RIGHT TO PRACTICE MODERN MEDICINE

Registered medical practice means,

- 1) Holding a qualification granted by an authority specified or notified under section 3 of the Indian medical degree Act, 1916 (7 of 1916) or specified in the schedule to the Indian medical council Act, 1956 (102 of 1956).⁸

DISCUSSION

Physician's explanations to the patient and patient's understanding of that explanation in medical setting have become increasingly important in recent years. It is better to reserve the right of the patient as well as physician. It has been noted that physician's explanation and the level of the patient's understanding is related to patient's satisfaction about treatment and treatment outcome.

Thus, physician's skill, knowledge plays an important role in improving patient's satisfaction preventing medical disputes and increasing treatment effectiveness.

Sometimes explanation is needed to obtain written consent cases of invasive care, to secure the patient's right of self-determination and to medical treatment and guidance. Physician should preserve degree

certificate and some necessary instruments in their clinic while practicing to avoid any legal action.

CONCLUSION

The above mentioned duties will be useful for the physician to practice ethically and legally. It will help to improve physician – patient communication in hospital setting. Physician’s need to remain aware of evolving legal development and ethical discourse.

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