MEDICOLEGAL NOTES

Surgeon, Anaesthetist and CPA

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The doctor whose duty is to care their patients, if fails to show due care or skill in medical treatment resulting in death, injury or pain of the patient gives rise to a cause of action in negligence.

A charge of professional negligence against a medical man is serious. It stands on a difficult footing to a charge of negligence against the driver of a motor car as the consequences are far more serious. It affects his professional status and reputation.with the best will in the world, things sometimes go amiss in surgical operations or medical treatment. A doctor is not to be held negligent simply because something goes wrong.he is only liable when he falls below the standard of a reasonably competent practitioner in his field so much so that his conduct may be deserving of censure or inexcusable. A surgeon or anaesthetist will be judged by the standard of an average practitioner of the class to which he belongs or holds himself out to belong.

Failure to exercise due skill in diagnosis as a result of which wrong treatment is given, is held to amount to negligence (1). A competent medical practitioner must know a case is beyond his skill.it is the bounden duty of the doctor either to call in a more skillful person or to advise the removal of the patient to a place where skilled treatment is available.

Some of the common errors of the surgeon are :-

1. Disclosure of Information

The dissatisfaction of the patients following surgery stems from inadequate communication between patient and the surgeon during the preoperative stage. The expected chances of success and failure, the risk and benefit of the procedure, the hazards and complications of the particular surgery should be explained to the patient before obtaining the consent for surgery. e.g.

i) The surgeon is duty bound to inform the patient of the risk of alteration of voice following any operation to remove thyroid tissue.
ii) The patient undergoing parotid surgery or complicated mastoid surgery has the right to know about the unavoidable complications of weakness of facial nerve and the risk of facial nerve injury.
iii) The patient must be warned about the risk of losing sensation following breast augmentation or breast reduction (2).
iv) The patient undergoing gastric surgery must know the recognised complications like alteration in digestion which leads to dumping syndrome.
v) It is mandatory to warn the patients undergoing prostatectomy that retrograde ejaculation and sexual disorder may occur.
vi) The patients undergoing vasectomy operation must know that sterility is not achieved immediately after operation and that normal contraception should continue until a few consecutive negative seminal counts are achieved.

2. Treatment Before Surgery

Failure to obtain the history of the patient, may result in omission to make proper clinical examination leading to inappropriate therapy resulting in tragic end of the patient

Before operating to remove thyroid, the vocal cords should be examined to check whether they move normally because in default the paralysis of vocal cords may be ascribed to damage to the nerve during operation.

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Similarly, any one presenting with a lump in the breast should be carefully examined and depending on the findings of the examination.

The patient should be enquired about the drug history before the surgery because many drugs have serious complications if continued during the operation.

3. Delay in Surgery

The delay in surgical treatment is considered as negligence where the correct diagnosis indicates urgent surgery (3).

The strangulated inguinal hernia is diagnosed by clinical examination. The undue delay for adequate resuscitation without taking the patient to the operation Theatre may constitute negligence.

Similarly, delay in operation of acute appendicitis may develop ruptured appendix and pelvic sepsis causing death or fertility problem in young girls.

4. Damage During Surgery

Bleeding is inevitable in surgery. The bloodless operation requires application of tourniquet, which very often causes damage to nerves. The surgeon must apply reasonable care not only in application or removal of tourniquet but also the duration and pressure of application of same.failure to remove the tourniquet at the end of the operation is actionable negligence.

Retention of instrument or foreign body within the abdominal cavity excites reaction, which invariably involves additional adhesion formation and may be associated with some local sepsis.

The surgeon often asks the anaesthetist to administer the drugs that lowers the blood pressure during operation, involving territory with abundant blood supply (4). In such cases,it is the duty of the surgeon to ask the anaesthetist to raise the blood pressure back before to normal before closing the wound. Omission to recognize the injury resulting in postoperative bleeding may also amount to negligence on the part of the surgeon.

5. Postoperative Monitoring

The duty of the surgeon is to observe the patient during postoperative stage in order to check abnormalities in pulse rate, blood pressure, respiration, urine output, temperature and consciousness level. It is important to monitor the fluid balance of the patient during postoperative period. The development of haematoma or wound infection is very common after emergency. Failure to diagnose and treat haematoma may contribute negligence (5).

Anaesthesia

Some of common errors of anaesthesia are:

1. Disclosure of Information

Anaesthesia is a potent source of allegation of negligence. Except the cases of emergency, preoperative discussion with the patient about the choice of suitable anaesthetic is mandatory. The patients should be informed of possibility of damage or displacement of loose teeth, crowns and bridgework during anaesthesia. The possibility of postoperative headache should be discussed with the patient preoperatively during spinal and epidural block (6). The anaesthetist must take care to avoid regional blocks of all types in patients with neurological disease.

2. Vigilance and Monitoring

The constant vigilance during anaesthesia falls within the ambit of duty of the anaesthetist. Delegation of duty to inexperienced anaestetist is not permissible in law. It is the duty of the anaesthetist to check the equipments including gas cylinder and anaesthetic machine, prior to operation and to ensure that the equipments are functioning correctly throughout the period when the patient was dependant in it.

3. Accident in Intubation

Intubation of trachea carried out under general anaesthesia carries its own risks. By careful and gentle manipulation of the endotracheal tube, the experienced anaesthetist may prevent damage of the soft tissues of the lips, mouth, tongue, pharynx and larynx.misplacement of the endotracheal tube by itself cannot contribute negligence, but failure to detect and recognize that the tube is misplaced before hypoxic damage occurs is negligence on the part of the anaesthetist (7). It is obligatory on the part of the anaesthetist to verify the correct placement of the tube by some means of post intubation check preferably by auscultation of both sides of the chest.

Barring emergency intubation, the duty of the anaesthetist is to inspect the patients dentition preoperatively and to make note of loose teeth, crowns, bridge work and missing teeth. The displacement of a tooth may be defensive under certain circumstances but failure to search for and retrieve the missing tooth will be indefensive. The careful use of the laryngoscope and the use of plastic protector over the upper anterior teeth in anticipation of difficulty are advisable.

4. Accident in Regional Anaesthesia

Intravenous block may cause systemic toxicity if the local anaesthetic agent is allowed to escape in large quantity into the circulation. The result may be convulsions, cardiac depression and even death.it is obligatory on the part of the anaesthetist to ensure that the block carried out is safe, effective and useful.

The possibility of headache due to spinal anesthesia cannot be ruled out when large bore needle is used. The anaesthetist must avoid regional blocks of all types in patients with neurological disease.

5. Brain Damage

Failure of oxygen delivery to the brain results in cerebral anoxia, which not only stops the brain machinery, but also wrecks the same. The result of cerebral hypoxia is profound viz impairment of intellect, permanent disability and at worst death.

6. Awareness During Anaesthesia

There are number of causes for awareness during anaesthesia eg inadequate doses of anaesthetic drug and abnormal resistance to anaesthetic agents. The prime duty of the anaesthetist is to administer anaesthesia for unconsciousness and relief of pain. It is difficult to defend the allegation of awareness on the part of the anaesthetist (8).

a) Where faulty equipments were not detected prior to operation.
b) Where there was a failure to make constant vigil and minimum monitoring during the period of anaesthesia.
c) Where there was a failure to keep adequate record of anaesthetic procedure.
d) Where there was a failure to adhere to generally accepted clinical practice in the choice of anaesthetic technique.

To avoid the allegation of awareness during anaesthesia, the anaesthetist is required to keep constant vigil on the following clinical signs : -

- The appearance of sweating and lacrimation.
- The reaction of the pupil to light
- A rise in pulse or blood pressure.

Compensation

Under the general principles of tortuous liability the medical practitioner who caused injury or damage by negligence is bound to pay compensation. The medical man is bound to compensate the family of the deceased patient whose death is caused by his wrongful act, neglect or default. The sole basis of awarding compensation to the dependants of the deceased is that an account of culpable negligence or default of the offender, a valuable life who was the source of livelihood to the claimants is cut short.

Taking a look at the above fallacies, it is advisable for a doctor to get himself insured under the medical indemnity scheme of any of the national general insurance companies. All this will help him to free from the heavy tensions of sudden financial load if any.

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