Medical Negligence: The Concept, Principles And Liability

Introduction

This article seeks to expound upon the topic of medical negligence i.e. its meaning, various laws and consequences relating to it and liability that can be incurred by the victim of the medical malpractice/negligence. This article provides information about the concept to create as much awareness as possible.

Medical Negligence

Medical negligence is a blend of two words. The subsequent word exclusively depicts the significance, however the importance of carelessness has not been portrayed effectively it is a demonstration wildly done by an individual bringing about predictable harms to the next.

Medical negligence otherwise called medical malpractice is the ill-advised, incompetent, or careless treatment of a patient by a doctor, dental specialist, medical attendant, drug specialist, or other medical care proficient. Clinical negligence happens when a medical services supplier strays from the perceived 'standard of care' in the therapy of a patient. The 'standard of care' is characterized as what a sensibly judicious clinical supplier would or would not have done under the equivalent or comparative conditions.

It is absurdly compromising practice and it is delegated such in light of the fact that first, the person who commits the act did or ought to have anticipated that it would subject another to an antagonistic danger of mischief, and second, the size of the detectable danger was with the end goal that the actor ought to have acted securely.

For instance, after a serious operation of a patient, he is probably going to get contaminated by numerous infections in view of certain explanation which can incorporate loss of blood, shortcoming, and high portion of drugs. At the appropriate time, standard consideration is required from the specialist to give premedication with respect to certain irresistible infections. On the off chance that a specialist neglects to do as such because of which a patient experiences some contamination which can cause a ton of damage or even passing in antagonistic cases, the specialist is said to have submitted medical negligence or medical malpractice.

Negligence Basics

There are distinct definitions of negligence. It is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. It must be determined in all cases by reference to the situation and knowledge of the parties and all the attendant circumstances.

Think of a driver getting into an accident on the road. In a car accident case where one person

caused the crash—by breaching their legal duty to obey traffic laws and drive responsibly under the circumstances—that person may be held responsible for all injuries and other losses ('damages') suffered by other parties involved in the crash.

Essentials/Prerequisites

1. Doctor's Obligation to Go to the Patient With Care

Medicine is such a profession where a practitioner is supposed to have requisite knowledge and skill needed for the purpose and has to exercise a reasonable duty of care while dealing with the patient. If the doctor or a specialist doesn’t attend a patient admitted in an emergency or under his surveillance and the patient dies or becomes a victim of consequences which could have been avoided with due care from the doctor, the doctor can be held liable under medical negligence.

If a specialist didn't give enough consideration to the patients in government emergency clinics because of which the patient endures, the specialist can be held subject to pay remuneration to the patient. A specialist or a clinical professional when takes care of his patients owes him the accompanying obligations of care:

1. A obligation of care in concluding whether to attempt the case
2. A obligation of care in choosing what treatment to give
3. A obligation of care in the organization of the treatment

2. Doctor Acting in a Careless Way

Res Ipso loquitur, Latin for “the thing speaks for itself,” a doctrine of law that one is presumed to be negligent if he/she/it had exclusive control of whatever caused the injury even though there is no specific evidence of an act of negligence, and without negligence, the accident would not have happened. A doctor is not an insurer for the patient, failure to treat the patient would not add up to carelessness yet thoughtlessness bringing about an unfriendly state of the patient would.

Shifting of the patient from one ward to another despite the requirement of instant treatment to be given to the patient resulting in damage to the patient’s heath then the doctor or administrator of the hospital shall be held liable under negligence.

Before performing any surgery the chart revealing information about the amount of anaesthesia ad allergies of the patient should be mentioned so that an anaesthetist can provide ample amount of medicines to the patient. The doctor in the above case neglected to do as such because of the overdose of sedation the patient kicked the bucket and the specialist was held obligated for the same.

Liability

The liability of the individual committing something unacceptable can be of three sorts relying upon the damage or the injury endured by the harmed individual they are:

1. Civil Liability

Civil obligation ordinarily incorporates the case for harms endured as remuneration. On the off chance that there is any penetrate of obligation of care while working or while the patient is under the management of the clinic or the clinical expert they are held to be vicariously at risk for such wrong dedicated. They are at risk to pay damages as pay. On occasion the senior specialists are even held vicariously subject for the wrongs submitted by the lesser specialists or junior doctors.

The emergency clinic specialists were held to be careless, for not keeping the restroom clean, which brought about the fall of an obstetrics patient in the washroom prompting her passing. A remuneration of Rs. 1 Lac was granted against the hospital.

2. Criminal Liability

There may be an occasion when the patient has died after the treatment and criminal case is filed for allegedly causing death by rash or negligent act. Whoever causes the death of any person by a rash or negligent act not amounting to culpable homicide shall be punished by imprisonment for up to two years, or by fine, or both.

3. Medical malpractice

The conduct of medical malpractice was brought under the Consumer Protection Act. The judgment, in this case, defined medical care as a “service” that was covered under the Act, and also clarified that a person seeking medical attention may be considered a consumer if certain criteria were met.

- The service provided was not free of charge or for a nominal registration fee;
- If free, the charges were waived because of the patient’s inability to pay;
- The service was at a private hospital that charges all patients; or
- Any service rendered which was paid for by an insurance firm.

Conclusion

Medicine which is one of the noblest professions requires setting a realm which can benefit the victims of various diseases. Many doctors even the specialist sometimes neglects small things to be taken care of while practising which may result in damages to the patients that could have been avoided or sometimes even the death of the patients. This type of professional negligence needs more focus than to include it in other laws or statutes. An independent and unique legislature shall be set up to govern the malpractice.

In my opinion, the law shall be made applicable to all the professionals practising in different areas which require a requisite amount of skill and duty of care. People in our country are already victims of many diseases and are dying due to same, let’s make efforts to reduce these deaths and focus on improvising the profession so that people do not die in the place where they come to get cured.