

Consent!

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The medico legal environment in the country is stormy. Medical negligence is a grey area and doctors are obvious soft targets. A recent Supreme Court judgement awarding crores of rupees to a patient has opened up a Pandora's Box. A less than optimal outcome and patients are running to court. The government has passed a law to punish doctors, who help people wanting an illegal abortion. More than preventing illegal abortion, the law has resulted in innocent doctors being put behind bars and their licenses revoked. And their biggest crime most often has been incomplete paper work!! There is a thin line between a medical complication, a medical error and medical negligence. Matters become more muddled as lawyers and judges have limited medical knowledge. In such a situation, sympathising with a patient or grieving family and targeting the doctor are an easy way out! Unfortunately more and more courts in India are going against doctors and hospitals. As I see it, the situation will only worsen with time. How do we as doctors cope with these changing and hostile times?

As per section 13 of Indian Contract Act, Consent means agreement or compliance. Two or more people are said to consent when they agree to the same thing in the same sense. Any medical examination or treatment without consent is considered assault on the patient. A written informed consent refers to a written consent given by the patient after being informed of nature of illness, nature of operation, its alternative, its consequences and complications. It is legally binding. Blanket consent is usually a printed consent taken at the time of admission authorising the surgeon to do any surgery under any anaesthesia. Legally it is not a valid consent. Till now we were relying on blanket consents. Continuing to rely on blanket consents is suicide. We won't stand a chance in court. We will be crucified even if innocent. If we hope to continue to practice our medicine freely and fearlessly, we need to change the way we take consents. An informed consent is a must. The consent has to be specific for the patient, for the illness and for the treatment. Once an informed consent has been taken, the patient has legally agreed to a treatment and more importantly the patient has legally taken cognizance that x, y and z complications can occur during the treatment. This will help doctors as the most common arguments of the patient like 'we were not aware of this complication!' or 'we were not told by the doctor that this could happen' or 'but the doctor had guaranteed a good result' would not stand in a court of law. A well written and informed consent makes it difficult for a lawyer to portray a complication as negligence just like a poor consent makes it easy! Today, a phone doesn't allow you to download software till you agree to multiple pages of consent. Isn't it time that we doctors adopt the same professionalism especially as we are dealing with human life?

I cannot overemphasize the value of proper documentation in a case-file. Judges rely completely on paperwork in the case-file in their search for the truth. All events that occur with the patient during the course of treatment should be documented with proper timeline. Verbal communication between the patient and the doctor cannot be proved. When a lawyer sees impeccable paperwork, he/she will discourage a patient from going to court as their chances of winning decrease.

If we don't want to worry about complications and court cases then we ought to worry about consents and paperwork. We really have no other choice!

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