

Ethical and Legal Issues in Dental Practice

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ABSTRACT

As dentistry moved into the twenty- first century the attention to ethics would have to be even greater. Nowadays ethical standards in modern dentistry are in a tempo with rapid advance. Learning to handle practical ethics issues and developing one's professional identity are essential steps in becoming a good dentist. The core issues in dental ethics are the ethics of the dentist patient relationship, patient's confidentiality, and the need to obtain informed consent. Although law and ethics have similarities, law may be better defined as the sum total of rules and regulations by which a society is governed. Healthcare malpractice can be challenged under two main categories in the court of law, that is, civil and criminal depending on the nature of offence. A third category lies under Consumer Protection Act (CPA), 1986, where professional services provided by the dentist can be challenged. Records are the most important factors needed to prevail in the lawsuit. Therefore, there is a need for oral health professionals to update their understanding on Ethics, informed consent, CPA and its amendments and professional indemnity insurance.

Keywords: CPA, Dental negligence, Ethics, Informed Consent, Indemnity, Law, Malpractice,

INTRODUCTION

The health profession has long been considered as the 'noble profession'. Becoming a dental health professional is a lifelong process of consistent behaviour affirming the principles of beliefs. The term 'professional', refers to one who practices a learned profession. The essence of every health profession is service above self. ^[1] A profession as an occupation involving relatively long and specialized preparation governed by a special code of ethics. ^[2]

Ethics, as a branch of both philosophy and theology, is the systematic study of what is right and good with respect to character and conduct. ^[3] It seeks to answer two fundamental questions: What should we do? Why should we do it? Dentist needs to practice dentistry at the certain standard of care. In modern era, more complex structure of society has raised

complicated ethical issues towards the dentists. Given the current direction of health and dental care, it is essential that dental professionals understand and practice wholeheartedly the code of ethics.

Ethics is the study of morality — careful and systematic reflection on and analysis of moral decisions and behaviour, whether past, present or future. Morality is the value dimension of human decision-making and behaviour ^[4] whereas law refers to body of official rules and regulations, legislation, judicial opinions, and the like, that is used to govern a society and a formal mechanism of social control. Recent spurt in litigation concerning dental professional or establishment liability, claiming redressed for the suffering caused due to dental negligence, vitiated consent, and breach of confidentiality arising out of the doctor-patient relationship are matter of concern.

Hence the aim is this article to review the Ethical and legal Issues in dental practice. [5]

PRINCIPLES OF ETHICS

Ethical principles are the inspirational goals of the profession, which provide guidance and offer justification for the Code of professional conduct and the advisory opinions. Ethical codes vary from one country to another and even within countries, but they have many common features, including commitments that dentists will consider the interests of their patients above their own, will not discriminate against patients on the basis of race, religion or other human rights grounds and will protect the confidentiality of patient information. [5]

In 1997 the FDI adopted the International Principles of Ethics for the Dental Profession for dentists everywhere. These International Principles of Ethics for the Dental Profession should be considered as guidelines for every dentist. These guidelines cannot cover all local, national, traditions, legislation or circumstances. [2,3]

Ethical principles are the moral rules and foundations of justification source to be applied in order to exercise an ethical practice. These principles are, Autonomy, Non-maleficence, Beneficence, and Justice Each principle is binding unless it conflicts with another moral principle, and in that case, we are to choose between them. [2,3,6]

Autonomy

Autonomy (“self-governance”) is the first principle which is derived from Greek; *Autos* (self) and *Nomos* (rule, governance, or law). This principle says the dentist has to respect the patient's rights to self-determination and confidentiality. The dentist's primary obligations include involving patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities. Moreover, others are obligated to protect confidentiality, respect privacy, and to tell the truth. [2,7]

Non Maleficence

"Non-maleficence" derived from the ancient Latin *maxim "primum non nocere"* means "**first, do no harm**". The principle gives the idea that professionals should protect the patients from harm. The dentists' primary duty is keeping up to date knowledge and skills. Knowing one's own limitations and when to refer to a specialist or knowing when and under what circumstances delegation of patients care to auxiliaries is appropriate are other moral requisites of the dental profession. [2,3,7]

Beneficence

Beneficence comes from the Latin word *benefactum*, meaning "good deed". It denotes the practice of good deeds and it has a meaning of an obligation to benefit others or seek their good in itself. Beneficence mandates the concept that the dentists as health care professionals, have to practice to benefit their patients and have to consider this as a duty. [8]

Justice

The principle of justice embodies the concept that the dental profession actively pursues the ability to improve access to care for all throughout society. Ozar and Sokol state that society often determines what is just and unjust, therefore it is imperative that dentists rely on cues from society to ensure ethical compliance. Practicing justice includes serving patients without discrimination against race, creed, colour, sex or national origin. [5]

DCI CODE OF ETHICS AND DENTIST ACT, 1948

In exercise of the powers conferred by the dentists Act, 1948 the Dental Council of India as on 2014, issues a copy of the Declaration at the time of registration. This includes Ethical code regarding character and responsibilities of dentists in maintaining good clinical practice, dental records, display of registration number, drugs prescription, fees and other remuneration and signing professional certificates, reports and other documents are provided.

Ethical code regarding responsibilities of dental surgeon to one other which included

dependence upon each other, conduct in consultation, appointments of substitute and visiting another case are explained. Duties and obligations of dental practitioners towards their patients and their confidentiality, treatment prognosis and neglect as well as duties of dental surgeons and specialists in consultation, opinion and disclosure of information, referral of patients and fees and other charges with consultants are elaborated. Dentist should act as good responsible citizen and work towards public welfare and should promote practice of different paramedical.

Unethical acts related to advertisement, soliciting, publicity and signage, patents and copyrights, rebates and commissions, human rights and unethical practice are discussed. In unethical practice regarding signing certificates, use of abbreviations, naming and styling of dental establishments, doctor patient's relationship and relationship with pharmaceuticals and dental companies. [9,10]

Ethical issues

Access to dental care

Care should be available, within reason, to all seeking treatment. A dentist must not unlawfully restrict access to professional services and barriers that restrict the access of physically impaired individuals should be eliminated to the extent that this can be reasonably accomplished. [2,11]

Advertising

While the practice of advertising is considered acceptable by most professional organizations, it must never be false or misleading. Advertising by a dentist must not misrepresent or mislead or deceive by partial disclosure of relative facts. It should neither create false or unjustified expectations of favourable results nor imply unusual circumstances. [3,10,11]

Confidentiality

It is assumed that health professionals and ancillary personnel, such as record keepers may need patient's information. Further, relevant facts may be communicated to students and other

appropriate health care professionals for educational purposes. For some infectious diseases there may be no community standard regarding the dentist's obligation to protect patient confidentiality when third parties are at risk of infection. [3]

Veracity

This includes truthful communication without deception and maintaining intellectual integrity. Areas included under veracity are truthfulness in billing issues and referral. Another area in which veracity comes into play revolves around credentials. It is imperative that a dentist be truthful regarding specializations and degrees held. [2,3]

CONSENT

The term consent means voluntary agreement, compliance, or permission. [12] The concept of consent comes from the ethical issue of respect for autonomy, individual integrity and self-determination, also it is the legal issue that protects every patient's right not to be touched or in any way treated without the patient's authorization'. The confidence, co-operation and, critically, the agreement of the patient will contribute to a successful administration of treatment and a satisfactory outcome for everyone. It acts as an evidence that the clinician has sought, and been given, permission to intervene and affect the physical integrity of the patient. [6,12]

Types of Consent

Depending upon the circumstances, in each case, consent may be implied, expressed, informed, proxy consent, loco parentis or blanket consent.

Implied consent

It implies consent to dental examination in a general sense i.e. when a patient approaches the dentist for treatment; it is presumed that there is consent for routine physical examination. This is the most common variety of consent in both general and hospital practice. [13] Most dental treatment is carried out while the patient is conscious and they are therefore capable to stop the dentist when they wish

to. Though an implied consent is not written and its existence is not expressly asserted but nonetheless, it is legally effective. [8,13]

Expressed consent (Tacit consent)

Expressed consent is one, the terms of which are stated in distinct and explicit language. Express written consent should be obtained for all major diagnostic procedures, general anaesthesia, for surgical operations, intimate examinations, and examination for determining age, potency and virginity and in medico-legal cases. When the patient expresses his consent verbally it is termed as 'oral or verbal expressed consent' and when express in writing is known as 'written expressed consent'. [14]

Informed consent

Informed consent is the process of obtaining permission of a subject to participate in research and to give an opportunity to decide about his or her healthcare. Informed consent also implies that a dialogue has taken place about the nature of the decision, reasonable alternatives, relevant risks, benefits and uncertainties of the decision, and the comprehension and acceptance of the health-care decision by the patient / subject. [15]

Proxy consent (Substitute Consent)

This type of consent is utilized in the event the patient is unable to give consent because he/she is a minor or mentally unsound/ unconscious. In such situations a parent or close relative can provide proxy consent. [16]

Loco (consent) parentis

In an emergency situation in case of children, when parents/ guardians are not available, consent can be obtained from the person bringing the child for dental examination or treatment (For example: school teacher, warden, etc.) [15,16]

Blanket consent

It is a consent taken on a printed form that covers (like a blanket) almost everything a dentist or a hospital might do to a patient, without mentioning anything specifically. Blanket consent is legally

inadequate for any procedure that has risks or alternative. [15,16]

Valid Consent

Valid consent consists of three related aspects:

1. Voluntariness

Patients should give consent completely voluntarily without any pressure either from the dentist or any third party (e.g. relatives).

2. Capacity to consent

The patient should be in a position to understand the nature and implication of the proposed treatment, including its consequences.

3. Age of consent

The age of consent is bound by legal definitions and within the context of the Indian law, there are two schools of thought. Section 90 of the Indian Penal Code of 1860 states that "Consent by intoxicated person, person of unsound mind or a person below twelve years of age is invalid." This therefore implies that a person above 12 years of age can consent to medical/surgical/dental treatment if it is intended for their benefit and undertaken in good faith. On the other hand, according to Section 11 of the Indian Contract Act of 1872 - a competent person of sound mind who has attained the age of majority of 18 years can legally enter into a contract.

Since the dentist-patient relationship is essentially a contract, it implies that only persons 18 years of age and above can enter into a doctor-patient contract and can give consent for treatment. In the absence of clear cut legislation, the majority of doctors/ dentists in India considers the consent of a person above twelve and less than eighteen years of age valid for medical/dental examination only, but for dental interventions prefers to take the consent of the parents/ guardians. This is a definite safeguard against civil liability.

The primary responsibility for providing care and consent for the child or young person should lay with his/her parents. Patients under the age of minority or adults with diminished mental capacity should have treatment consent obtained

from a parent or legal guardian. The adult accompanying the paediatric patient may not be a legal guardian allowed by law to consent to dental procedures. [12,13,15]

Consent may not be obtained in the following situations, [17]

- Person suffering from a notifiable disease.
- Spread of infection
- Examination of immigrants.
- Members of armed forces, handlers of food and dairy products.
- Prisoners and criminals
- Vaccination
- Child offenders-when the Magistrate makes the request.
- Attempted suicide
- Medical emergencies

Issues related to consent

Consent in medical and dental photographs

Informed consent should be obtained for all uses that will be made of medical and dental images, including worldwide distribution through various electronic media [18]

Dental tourism and consent

Issues related to dental tourism include patient autonomy over practitioner choice, patient safety, continuity of care, informed consent and doctor-patient communication, among other factors. In particular, patients partaking in dental tourism should be informed of its potential problems and the importance of proper planning and post treatment care to guarantee high-quality treatment outcomes. [18]

LEGAL ISSUES IN DENTAL PRACTICES

While providing the oral healthcare services, a dentist has to follow certain set of standards to avoid any litigation in the name of malpractice. Consent is a fundamental and established principle in the Indian Law. Medical or dental records are documentary evidence as per the Indian Evidence Act, 1872. Healthcare malpractice can be challenged under three main categories in the court of law, that is, civil and criminal depending on the nature of offence and Consumer Protection Act, 1986.

So, this section will deal with dental negligence, Consumer Protection Act and other acts and professional indemnity insurance.

Dental Negligence

Negligence is the act of omission or submission of an act that is done by a doctor in this case a dentist who has not done his job or who had done his job carelessly. The Supreme Court of India has observed that the essential components of negligence are three: 'duty', 'dereliction', and 'damage' as stated in the Law of Torts. [11,12] For an act to be considered negligent, dentist owed a certain standard of care but did not maintain that standard. Or if there is an injury resulting from the lack of care and a connection (proximity) between the negligent act and the result and injury. [12]

Some of the dental negligence acts are failure to attend emergency, unable to prevent cross infection between patients and health care persons, not fulfilling patients' right to information about the procedure.

Test used to determine negligence (Bolam test)

The test of negligence is a test of the reasonable man. What a reasonable man must have done, if not done or vice versa would result in an inference of negligence. The test of a skilled professional is the test of an ordinary man with the requisite amount of knowledge and not one with higher degree of knowledge. What is required to be seen is that in the given circumstances was the treatment given by the doctor justified. Mere difference of opinion among medical faculty would not constitute as liability upon a doctor on the course adopted by him/her. [19]

Dentists are liable for negligence under four categories [12,19]

1. Tortious liability
2. Contractual liability
3. Criminal liability
4. Statutory liability

1. Tortious liability (Civil liability)

When a dentist is directly liable for an act of negligence in his clinic or hospital, it is called **primary liability**. Dentist who is employed by a hospital or institution is often not primarily responsible for negligence. They may be said to have vicarious liability through the hospital. The hospital has the liability for the negligence of an employee. However, if the patient is admitted by a dentist in his personal capacity, then the dentist will be personally liable. The remedy for breach of tortious liability is unliquidated damages as awarded by the judge; it is usually in the form of compensation by cash. [18,19]

2. Contractual liability

A breach of any aspect of the implied contract may be considered a contractual liability. However, in most instances if there is no written contract, their liability will essentially lie within the realm of tortious liability. [14]

3. Criminal liability

Criminal negligence is considered to be a crime against society and not just the aggrieved part. The important offences inviting criminal liability with regard to negligence are: A rash or negligent act resulting in death, (Sec 304 A IPC), An act endangering the life of a person (Sec 336 IPC), A rash or negligent act causing simple injury (Sec 337 IPC) and grievous injury (Sec 338 IPC). [14,15] This liability normally lies with an identifiable individual or groups of individuals. Criminal liability is penal and involves punishment in the form of imprisonment or fine or both. [12,17,20]

4. Statutory liability

A dentist is liable if there is any infringement of statutes. They then become accountable to a statutory body. There are many statutes dealing with practice of doctors and dentists, as well as hospitals. Under statutory liability, dentist is liable some acts such as Bio-medical waste (Management and handling) Rules 1988, Drug prescription policy and Drugs and Cosmetics Act, 1990 and Clinical Establishment Act, 2010. [17]

Supreme court guidelines for prosecution of medical practitioners regarding medical negligence in India are as follows: [19]

- Government of India along with the Medical Council of India should formulate certain rules/regulations to regulate aspects of negligence in medical practitioners.
- To make a case against a doctor, the complainant has to submit evidence of a prima facie (at first sight) case before the authority taking cognizance of the act.
- The investigating officer must also, independently, obtain an impartial and unbiased opinion of a doctor who practice in the same field in the same regard (preferably a government hospital)
- The doctor concerned should not be arrested like in a regular prosecution. He may be arrested if there is a fear that that the doctor will not make himself available for investigation.

STATUTES

Consumer Protection Act,1986

Healthcare malpractice can be challenged under two main categories in the court of law, that is, civil and criminal depending on the nature of offence. Civil law deals essentially with the rights and duties of individuals and is dealt with in civil courts. The Consumer Protection Act, 1986 is one of the examples in civil law that is to be treated as a milestone in the history of socioeconomic legislation to protect the interests of the consumers in India.

Consumer can file the complaint in consumer court on the basis of value of the goods or services. The compensation, if any, claimed through National Consumer Protection Council (above 1 crore rupees), State Protection Council (20 lakhs to 1 crore rupees) and District Protection Council (less than 20 lakh) in consumer court. In recent years there has been a steady increase in number of complaints that are being filed by the patients against dentists and hospitals in

various consumer forums/commissions for dental negligence. [14-17,19]

The Bio-medical waste (Management and handling) Rules,1998

The Bio-medical waste (Management and handling) Rules 1998 lay down clear methods for disposal of bio-medical waste. These rules apply to all persons included dentist, who generate, collect, receive, store, transport, treat, dispose or handle bio-medical waste in any form. Duty of occupier (generator) to take all steps to ensure that such waste is handled without any adverse effect to human health and the environment. So, dentist should be aware of biomedical waste management to prevent transmission of disease to patients and oral health care professionals. [21]

Drug prescription policy and Drugs and Cosmetics Act, 1990

It regulates the import, manufacture, distribution, and sale of drugs and cosmetics. It deals with all drugs used for treatment, diagnosis, or prevention of disease in man and animals. All drugs used in dentistry should be regulated by Drugs and Cosmetics Act 1990. In India there is no separate Dental formulator for drugs prescription. [22]

Clinical Establishment Act,2010

In 2010 Clinical Establishments (Registration and Regulation) Act, 2010 has been enacted by the Central Government to provide for registration and regulation of all clinical establishments in the country with a view to prescribe the minimum standards of facilities and services provided by them. This Act is applicable to all kinds of clinical establishments from the public and private sectors, of all recognized systems of medicine including single doctor clinics. The only exception will be establishments run by the Armed forces. [22]

PROTECTION AGAINST LITIGATION

Dental records are documentary evidence as per the Indian Evidence Act, 1872 (Amended in 1952 and 1961). These are generally summoned to the court of law in various types of cases in our country. All

records must be contemporaneous and must be signed and dated. Legally, dentist's written records carry more weight than patient's recollection. Records contain a written evidence in the form of letter, circulars, reports, contracts, invoices, vouchers, minutes of meetings, books of accounts etc. [12]

Routine case records should be preserved up to 6 years after completion of treatment and up to 3 years after death of the patient. Medico-legal importance records should be preserved up to 10 years, however where there is chance of litigation arising for purpose of negligence records should be preserved at least 25 years, after which they can be destroyed after making index and recording summary of the case. If negligence happened during the period of minority, the minor has the rights to sue the doctor within three years after majority. [20]

Disclosure of complete information that is necessary to the patient regarding the treatment is essential to avoid any clauses of negligence against the doctor, even if there is no contract between the doctor and patient.

A tertiary level of protection against outcome of litigation would be to go for insurance cover. Professional indemnity insurance cover became available for doctors and medical establishments from December 1991. These insurances are designed to provide the insured person protection against the financial consequences of legal liability. The importance of professional indemnity insurance as a preventive measure helps to avoid litigation and provide security to the dental professionals. [12,23]

Professional indemnity insurance

The term "indemnity" means reimbursement or to compensate. The principle of indemnity is strictly observed in liability insurances. These insurances are designed to provide the insured person protection against the financial consequences of legal liability. The insurance companies not only pay the compensation to other party but also arrange

for the legal help from advocates because they sometimes join hand with other party for monetary gains with an excuse that it's the insurance not the doctor who is to pay the compensation. [23,24]

Legal cost and expenses incurred in defence of the case, with the prior consent of the insurance company, are also payable, subject to the overall limit of indemnity selected. Only civil liability claims are covered. Any liability arising out of any criminal act or act committed in violation of any law or ordinance is not covered. [25]

There are certain acts that are not covered in case of indemnity policy issued to medical professionals, such as [23,25]

- Any criminal act or violation of any Act of Statute
- Services rendered under the influence of intoxicants or narcotics
- Performance by Dentists under general anaesthesia or any procedures carried out under general anaesthesia unless performed in a hospital.
- Wilful neglect or deliberate act
- Third Party Public Liability
- Pure financial loss due to loss of goodwill or loss of market ground

Benefits of indemnity insurance [23,25]

- It is beneficial not only to the doctors or hospital but also to the patients & their dependents because the insurance company takes care of the compensation
- Retroactive Benefit: This means that the insured will be covered for any professional act or omission occurring during the period of insurance
- It would take care of the amount of damages against third party.
- Scheme will also compensate on the principle of "no fault liability" to give some relief in the case of death or permanent disablement of the patient
- The company will also pay the defence costs, which have a direct relevance to the claim.

CONCLUSION

Dentistry in India is governed by Dental council of India. It is the responsibility of the DCI to ensure high ethical and legal standards for the dental profession. However, individual dentists have the responsibility to act in the patient's best interest and to provide the highest standards of clinical care. An important component of clinical care is the informed consent, which corresponds to the basic principle of patient autonomy and respect. The process of informed consent is also helpful in improving the dentist-patient relationship. There is the need for maintaining the records officially and professionally to protect against any commercial, legal and medico-legal litigation. Aggrieved patients can seek redress in the Consumer Protection Act when negligence exists on the part of the dentist. This can result in monetary compensation to the patient, the consumer, for deficient services on the part of dental professional. Professional Indemnity Insurance provides insurance cover to professional people against their legal liability to pay damages arising out of negligence in the performance of their professional duties. However, once a negligent lawsuit is filed against the dentist, a complex legal maze is opened. The best defence is avoiding the lawsuit in the first place and maintaining ethical standards is the key for successful practice

Conflicts of interest- Nil

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