NEGLIGENCE AND CASE REPORTS

Dr. S. Varun
Senior Lecturer, Dept of Pedodontics & Preventive Dentsitry

Dr. Y.B. Aswini
Senior Lecturer, Dept of Preventive and Community Dentistry

Teerthanker Mahaveer Dental College & Research Center, Moradabad

Abstract

As dentists we must know the concept of dental negligence and relevant provisions of various laws enacted in this area which is of great concern to us. Various laws for medical and dental practitioners have been based on negligence. Again the carelessness and recklessness has been identified as two different entities. Various case reports international and Indian has been discussed in this article.

Key Words: Dentist, Dentistry, Health Professionals, Laws & Medical Profession.

Introduction

There is a duty imposed upon the dentist to practice dentistry at the standard of care in his/her speciality. A breach of this duty that results in injury to the patient can result in a lawsuit against the dentist. This is generally referred to as "dental malpractice". Although the same rules apply to dentistry as in medicine, dentistry has to be isolated from medicine. For a act to be considered negligent the dentist owed a certain standard of care, the dentist did not maintain that standard, there was an injury resulting from lack of care and there should be a connection between the negligent act and the resultant injury.[1,2]

Carelessness otherwise not taken so seriously has been imposed by law a duty of carelessness on the doctor or health care worker. Legally the tort of negligence can be put on if the dentist has a duty to care for the patient , if there is any violation of this duty , any injury to the patient occurs or any proximate relation between the violation and the injury. Many dentists are ignorant of the facts of negligence and the consequences. Hence this review article in intended to through some highlights on the negligence and various case reports in dentistry. Various legal approaches by the patient have been discussed in series 1.[3,4]

Methodology

A thorough bullion search was done in various sites but yielded in very few articles. The law sites and sites of consumer protection act along with various books in law came to our help. Both international and national cases are discussed further in this article. As there is less awareness of consumer in India related to laws and dentistry we didn't find extensive cases in India, though we managed to brush up some. Few landmark cases which have led to making of laws in helath profession are also mentioned.

Case Reports [1-10]

Land Mark Cases

The supreme court of india has defined standard of care by health professionals in the case of IMA Vs V P Shantha as " in general a professional owes to his client duty in tort (civil wrong)as well as in contract to exercise reasonable care in giving advice or performing service. The court held that this standard should be outlined by the profession and it is not the duty of the lay courts to decide on what constitutes standard care. A dentist should not venture to do a procedure unless he is trained and competent in performing it. Merely admitting that he had little experience and therefore the mistake is no legal remedy it is not legally to be ignorant but it is legally wrong to act in ignorance."

The supreme court in LB Joshi Vs T .B. Godbole described the test of standard as "the medical practitioner should bring to his task a reasonable degree of skill as well as knowledge and must exercise a reasonable degree of care. Neither the very highest nor the very lowest degree of care and competence, judged in the light of the particular circumstance of each case is what the law requires."

Bolam Vs. Friern hospital managing committe (1957) 2 AIIER 118

A classical test widely used in United Kingdom as Bolam test is an acceptable test used by National Health Service of U.K. when a situation of negligence presents itself. A psychiatric patient was given electroconvulsive therapy (ECT) without the use of a muscle relaxant and with all normal precautions. However the patient developed a fracture during convulsions. A case of neglence was filled against hospital. But hospital was cleared of allegations on the ground that a group of professionals felt that it was standard procedure to give ECT without muscle relaxant due to the potential risk of respiratory failure with muscle relaxant. This case differentiated a negligent act from an alternate procedure (endorsed by another professional body), which is also accepted as a standard procedure.

Dr. Laxman Joshi vs Dr. Godbole AIR (1989) SC 128

A 20 yrs old boy had fracture of femur. The doctor performed reduction without anaesthesia. It was alleged that the patient died of pain shock. The doctor contested that he had given morphine and that death was due to fat embolism. The high court held that the doctors contention was only a cloak for death caused due to shock. The Supreme Court reiterated that the doctor had certain duties which he owed to the patient. It also said skill and care should be used in any procedure undertaken by a doctor this skill need not be of the very highest and certainly should not be low. It should be adequate and should be appropriate for a particular circumstance.

R A parmar Vs Grmi 1993 (2) CPR 496

It is a settled case that if the complainant if not benefitted by the system, it is a misfortune. The benefits of a treatment may be varied or depends upon a number of factors. Merely because the patient was not relieved from pain, one cannot jump to the conclusion that the system is bad or that the doctor has not given proper treatment.

Hatcher VS Black (1954) Times 2 July

An action for negligence against a doctor is for him unto a dagger. His professional reputation is as dear to him as his body, perhaps more so if for instance, one of the risks inherent in a treatment actually takes away the benefits that were hoped for or if on a matter if the opinion he makes an error of judgement, you must not therefore find him simply negligent. You should find him guilty of neglence when he falls short of the standard of reasonably skilful medical men.

The other cases are discussed under the various heading which every practitioner comes across.

Deficiency in Care

A doctor/dentist has a duty to care, once he has initiated treatment. If an injury occurs due to failure to take care, he may be held liable.

Ishwardas vs. VK Gupta 1(1992) CPJ 118NC

Complainant had a denture made for himself and his wife. The dentures were ill-fitting and caused ulceration in the mouth. The dentist did not rectify the mistake. The dentist was held liable.

Flower vs. SWMR (1995) 2 BMJ 387

A lady fell in her garden and had a wound in her arm in addition to fractures. The doctor applied plaster without cleaning the wound. The plaster was too tight and she developed gangrene and required amputation. It was held that the doctor was liable.

Munro vs. Oxford United Hospital (1958) 1 BMJ 167

A seven year old girl lost four teeth while applying a gag for tonsillectomy. Expert witness said it must have happened due to lack of adequate care in application of the tonsil gag. The doctor was held liable for damages.

Failure to Attend on Patient

The doctor/dentist is free to refuse treatment on valid grounds but has to continue treatment, once he has accepted the patient. However, ethically a doctor is bound to offer emergency help if he is available.

Yasmin Sultana vs. R. D. Pafel 1994 (1) CPR 407

A pregnant woman reported to a doctor at 11.00 PM with perceived labour pain. The doctor felt that it was pre-mature pain and did not warrant immediate treatment. Moreover, it was not his consultation time. The commissioner dismissed the complaint of failure to attend on the grounds that it was for a consultation outside his timings and it was not an emergency. He was at liberty to not be available for consultation. The doctor's duty to attend must be bound by medical necessity not as per the demand of patient.

Abandoning a Patient

Having accepted a patient, the doctor must `continue to treat'. The contract to treat ends only on completion of treatment or if the patient decides to terminate or by reference to another doctor.

Mr. Sakil vs. Dr P Irani 1992 (2) CPR 515

A patient in a serious condition following anaesthesia was shifted to another hospital for want of ICU. The anaesthetist did not accompany the patient, resulting in anoxia and brain death. It was held that the anaesthetist had abandoned the patient. However, if the patient leaves on his own, there is no responsibility for the doctor/dentist.

Fletcher vs. Bench (1973) 4 BMJ 118 CA

A patient who had a tooth extraction went on a holiday elsewhere. He developed swelling and infection while on which showed remnants of rods and he tried to remove the same, resulting in complications. The first dentist was not held liable for abandonment, as the patient did not go back to him.

Advice to patient

Failure of dentist to advice a crown for root canal filled tooth with significant loss of tooth substance can result in fracture of tooth. The dentist will be held liable.

Md. Aslam vs. Ideal N H J994(1) CPR 619

A patient had an abdominal surgery. She had a large quantity of food the next day against the advice of doctors. The surgical site opened up and she died. The doctor was not held liable, as the patient did not follow the advice given. If patient has been negligent in following an advice, it shall be contributory negligence.If advice given is wrong, then the doctor/hospital will be held responsible.

Fees

The doctor /dentist have the right to collect fees from the patient for services rendered. Although ethics require that the fee be reasonable, the dentist is at liberty to charge what he thinks is appropriate.

As per requirement of the Income Tax department receipts are to be issued for all charges above Rs 25/ and entries are to be made of it in the prescribed daily books of account. A complete bill with break ups need to be given to the patient, if demanded. However, the patient cannot question the cost of professional services.

Motibai Dalvi vs. MI Govilkar ll (1991) CPJ 684

The hospital made charges for telephone calls (which were not made) and cotton gauze, which was not used. The hospital was held liable to return the money.

RM Joshi vs. VP Tahilramani lll (1993) CPJ 1265

The patient was charged for bed when the hospital had no beds. The clinic was held liable.

A Bhatnagar vs. Dr Patnaik lll (1997) CPJ 368

Patient complained of excessive fee. The case was dismissed as fees did not constitute a consumer dispute or negligence.

BS Hegde vs. Dr S Bhatacharaya lll (1993) CPJ 388NC

Patient was charged Rs.40,000 for surgery. The National Council felt the fee was exorbitant. However, NC ruled that the acceptance of high fees cannot be deemed to be deficiency in service.

BM Raja vs. Dr A Gambhir 1999 (2) CCC 48

A patient complained that the dentist charged Rs. 150 for an extraction whereas other dentists charged less. It was held that in professional service, the fees charged cannot be questioned and there is no fixed charge. The charges may depend on skill, drugs used and experience of dentist.Other similar observations include:

- SK Jain Vs. Dr A Mathur 1999 (1) CCC 106.
- Dr. Kapoor vs. Phooldev Prashad 1!1 (1996) CPJ 477.

Foreign Body

Foreign bodies left behind in the body are a common cause for filing suits. In dentistry, this is quite common.

K.K.Radha vs. Dr. G.V.Sekhar lII (1994) CPJ 376

Drill bits and wire pieces were embedded in tibia after first operation for fracture reduction. The doctor and hospital were held liable.

Mrs. Rohini Kabodia vs. Dr. R. T. Kulkarni III (1996)

The patient had pain and fever following a caesarian. Sonography and exploration revealed the presence of a metallic suction tip. The doctor was held liable and was asked to pay Rs. 2 lacs.

Cooper vs. Miron (1927) 2 Lancet 35

In the process of tooth extraction, one tooth was aspirated. The patient developed pneumonia and died. The doctor was held liable for negligence.

Garner vs. Morrell (1953) Times 31 Oct. CA.

While extracting a tooth the gauze slipped into the throat and caused asphyxiation resulting in death. The dentist was held liable for the death of the patient.

Unknown case

Patient had three teeth extracted under nitrous gas by a third year student in presence of a registered dentist. The crown of one molar broke off and disappeared under her throat. On recovery from anaesthetic, she complained of difficulty in breathing. She was allowed to go home without further examination or treatment. She was not told about the missing piece of tooth. She contracted septic pneumonia due to impaction of tooth piece in a bronchus and died later. The jury found that negligence had been proved.

Certificate

False or incorrect certificates cannot only invite cases of negligence but also constitutes serious misconduct and criminal liabilities.

Evert vs. Griffitles (1920) 3K8 163

A doctor certified a boy insane and locked him in an asylum but the boy was later found to be sane. The doctor was held liable.

Routtey vs. Worthing HA CA 14 July 1983 Similar case as above.

Confidentiality

Dr T vs. Appollo Hospital lll (1998) CPJ 12 SC

The complainant, a doctor was found to be HIV positive during pre transfusion screening. The hospital on knowing his intention to get married, informed his fiancée resulting in cancellation of alliance. The complainant's stand that his right to privacy was a fundamental right was not accepted in view of it clashing with Sec 269 and Sec 270 of IPC (negligent and malignant act likely to spread infection or disease, dangerous to life).Failure to inform the fiancée would have amounted to abetment of crime and therefore the court ruled in favour of the hospital.

W vs. Egdell 1 A HER 1089

A psychiatric patient with a violent disposition was seen by a doctor, who disclosed the matter to the home office. The patient filed a suit for breach of confidentiality. The court held that the doctor acted in public interest and was not liable.

Doe vs. High -Tech Inst (Colorado Court of Appeal July 9, 1998)

A student was made to take a HIV test without his knowledge by making him sign a consent form for Rubella screening.The Court held that there was no public policy reason to test the plaintiff. HIV testing can only be performed by an authorized laboratory and only with the permission of the person concerned.

Injections and Allergies

- Dental surgeons use injections as a routine which may lead to law suits.
- Spring Meadows Hospital vs. H Ahluwallia i(1998) CPJ 1 SC

The patient was administered chloroquine IV instead of chloromycetene as the nurse miss read the doctor's orders. The child died due to brain damage. The hospital was held vicariously liable to pay Rs 17.5 Lakhs.

Chin Keow vs. Govt of Malaysia (1967) 1WLR 813

The patient was given penicillin without test dose and developed anaphylaxis and died. The hospital was held liable.

Dr Kushaldas vs. State AIR (1960) MP 50

An injection of penicillin without test dose caused death. The doctor held liable.

Kharatilal vs. Kewal Krishnan I (1998) CPJ 181

A patient with abdominal pain was given four drugs intra-arterially instead intravenously causing gangerene and requiring amputation. The doctor was held liable.

However, if complications develop despite best care and the cause cannot be explained, then the doctor/dentist is given benefit of doubt.

Y Ramamurthy vs. Dr Nagarajan. l(1997) CPJ525

Patient developed pain and swelling at injection site despite the doctor using aseptic technique and disposable needle. The case was dismissed as there was no contrary evidence.

In case of needle breakage the patient must be informed. There will be no negligence if that is done.

Gerber vs. Pine (1935) SJ13

The needle broke while the injection was being given. The doctor did not reveal it to the patient. Later, the needle became infected and had to be surgically removed. The court did not hold the doctor negligent for the broken needle but attributed negligence in not informing the patient.

Prescription

Prendergast vs. Sam and Lee Ltd (1984) The Times 14 Mar

A patient was prescribed amoxyl (amoxicilin) for an upper respiratory tract infection and the pharmacist gave him daonil (a hypoglycaemic). The patient developed hypoglycaemia, coma and brain damage. The doctor and pharmacist were held liable.

Emergency

Baby K. (SC, 1994 WL 31441 WSL 3 3009)

The supreme court noted that the emergency medical treatment and active labour act (EMTLA) was passed with the intention that all patients attending a medical centre must be given first aid or stabilizing treatment irrespective of whether the patient is identified and has the means of payment or not. The patient may be shifted only at his own insistence or if the doctor feels that it is imperative to move him to a better equipped centre.

In emergencies

1. Consent is not required.
2. Drug reactions are not considered negligent.
3. Any act done in good faith is exempt from clauses of negligence.

Any doctor can take-up emergency. A patient cannot be refused treatment on the ground that it is a medicolegal case and therefore to be seen in a government or approved hospital.

P Kataria vs. Union of India AIR (1989)SC2039

A patient injured in a road traffic accident was taken to a hospital where he was refused treatment on the ground that it was a medicolegal case and he would need to seek treatment elsewhere. The patient died on the way to the next hospital. The first hospital was charged with negligence on account of failure to treat. The Supreme Court in a landmark judgment held that all doctors need to extend treatment to the injured without waiting for any formalities. The doctor may be guilty of negligent death if he fails to provide emergency care.

Right to Information

All patients have a right to information about the procedure and possible outcomes. Failure to explain may be construed as a negligent act. It may however not be necessary in an emergency. If a procedure has significant risk of death, then the matter can be communicated to a near relative.The patient does not have a right to access his hospital records. Failure of a doctor/hospital not to furnish records is not negligence.

Lee vs. SW Thames RHA (1985) 2 AllEr 385

The court ruled that a doctor has a duty to answer patient's questions.

Poona Medicals vs. Maruti Rao 1986-96 Consumer 2656 NC

A patient wanted the medical records pertaining to her surgery. It was not the hospital's policy to submit records. It was held that there was no negligence, as there was no convention or rule in India to hand over the records.

P Krishnaswamy vs. Appolo Hospitals. l (1999) CPJ 119

It was held that the hospital was not negligent in not handing over the records. A discharge summary was good enough.The court may however requisition records to prove negligence.

Walker vs. Eli Lilly (1986) 136 NLJ 608

It was held that doctors and hospitals must make available the records and respond speedily in the interest of investigation except, if there were sufficient reasons of confidentiality.

Patient complained of continued sensitivity following crown placement on lower premolar. A conventional RCT was done but the pain persisted. Within 6 weeks following RCT, the doctor told her that she had to "scrap her roots" and performed a Apicoectomy without taking patient's consent which warned her about the possible risk of nerve damage.The Infra alveolar nerve was surgically traumatised near the mental foramen, leaving the patient with a permanently painful burning numbness of her lower lip and skin of chin up to the mid-line. Case was settled for $100,000.

Plaintiff was under continuous care of her general dentist for 32 years which included regular dental cleanings and full month series of dental &t bite wing x-rays. Patient was kept in dark regarding her onset and progression of periodontal disease even after she developed an perio abscess and a new series of full x-rays were taken. The general dentist did not inform her of her perio status instead reffered her to a periodontist who then informed her ft treated her subsequently. She lost several teeth in the process and had to undergo perio surgery.Case settled for $1,00,000.

Untrained practice, substandard treatment and error of judgment

Lock vs. Scantlebury (1963) Times 25 July

A dentist did an extraction. Subsequently, the patient complained of pain and difficulty in eating and speaking. The dentist prescribed drugs. Later, it was found that he had dislocation of the jaw. The court held that dislocation itself was not negligence, but his failure to recognize the TMJ dislocation was negligence.

Ishwardas vs. VK Gupta I (1992) CPJ 118 NC.

Ill fitting dentures which were due to poor technique resulting in ulceration and pain. The dentist was held liable.

Case unknown

The plaintiff underwent an operation of molar in the lower jaw. The Dentist employed a hammer and chisel. Tooth was elevated but the patient had a displaced lower left jaw due to excessive force and inadequate bone removal. The Defendant accepted fault that he was negligent. Admission of mistake does not equal admission of negligence. The recorder failed to apply the appropriate test of whether the error was one that would not have been made by a reasonably competitive professional person professing to have the standard and type of skill, acting with ordinary care. Thus, the defendant's appeal was allowed and a new trial ordered.

Doctor carried out extensive root therapy and bridge work in upper arch. Six years later the complinant began to suffer from symptoms due to malocclusion. The poor fit of bridge in relation to the trimmed crowns. The TMJ had become deranged. Patient suffered pain and tenderness at the joint with aching at sides of head, headache, pain and tenderness in neck. This pain and suffering lasted for 3 years. In these 3 years she also suffered from cosmetic impairment due to receding gums. She had to undergo remedial dentistry which was a very pro-longed process. Doctor was negligent in respect to fit of bridge and in respect of occlusion. General damages assessed at $4000 for pain, suffering and loss of amenities $ 5337 - special damage with respect to cost of remedial treatment of other expenses.

Patient was under treatment for lumbago of sciatica. His doctor, observing presence of pyorrhoea advised dental examination. On joint advice with dentist all 28 teeth were extracted. Bleeding persisted despite remedial measures. Patient died in 24 hours. Post-mortem revealed acute leukemia. Performance of mass extraction was not negligence. When dentist was acting with doctor, it was not his duty to discover the general health of patient or and look for abnormal signs. The dentist had not been negligent. As leukemia was rare it was not necessary to carry out B.T for it. Judgement for defendant

Patient told on examination by assistant to undergo periodontal treatment followed by placement of caps. On next visit the doctor started tooth preparation, and said no periodontal treatment was required. All her teeth were capped. After crown & bridge work she visited other dentist for routine checkup, cleaning of teeth etc. and was advised by the same to immediately consult a periodontist. The patient needed 4 quadrants of perio surgery. After surgery the gingival margins occupied a healthier position which was 1-3 mm below the original position making the crowns unaesthetic. She had to make new crowns cost $ 9000. The case was settled prior to trial for $ 47,500.

Patient complained of a white spot on his gums above max cen-tral incisors Et later noticed pus exuding from this spot. He referred the patient to his partner who performed periodontal surgery re-sulting in significant gingival recession. He found the source of perio abscess to be max anterior bridge made by first dentist.The patient then visited a periodontist who was very critical of the second dentist's attempt at perio therapy. Finally patient required replacement of bridge &r gingival graft surgery. Case was settled prior to trial for $24000.

A plaintiff sued her dentist for defective crown and bridge which caused periodontal problem and TMJ injury due to changed bite. Because of Doctor's negligence, the patient had to undergo perio surgery, RCT, and splint therapy for TMJ. The crown and bridge work was replaced. A California jury returned a verdict for the plaintiff awarding her $57,477.

Patient went to doctor for extraction and denture placement. Patient gave past medical history of squamous cell

carcinoma of left mandibular retromolar mucosa which was treated with radia-tion 3 years back.The doctor without investigating the history, extracted 12 teeth including a molar root piece in left mandibular region. No consent form was signed. The root piece used to be in path of radiation. Two months later dentures were placed. Patient returned in time after in next five months stating that lower left extraction socket had not. healed and there was foul odour and taste. Doctor termed this as infection which will go away. Eight months later patient acquired advanced osteoradionecrosis requiring mand. Re-section and reconstruction with bone and soft tissue grafts. The $2.96 million gross injury verdict set record for highest dental malpractice verdict in Florida history.

A patient went to orthodontist for treatment who without taking any x-rays, cephalometric analysis or even study casts, straight away recommended 4/4 4/4 extraction. Following which, he applied ortho brackets and elastic traction. A couple of months later, she complained of pain in neck and shoulders and headaches. Then TMJ pain began. The intensity of symptoms increased over the months. The patient decided to take second opinion and was asked by that orthodontist to remove braces as they were respon-sible for causing pains. The patient again underwent ortho treatment with jaws re-positioning surgery which was necessary in her case. The case was settled after jury selection for $ 85,000.

Patient was 64 years old. When she visited a general dentist to have U&L partial dentures made. Within one week, patient complained she had a sore under the denture on left side. She then gave family history of oral cancer. Her complaints were tabled as "denture sore" and dismissed without further investigation. In the mean time, the sore became bigger and more powerful. It was then biopsied by an oral surgeon and proven to be infiltrating stage III/ **S.C.C.**Patient had to undergo partial mandibulectomy, left radical neck dissection followed by radio-therapy. She developed subsequently osteoradionecrosis leading to loss of entire left mandible. She had several recurrences which caused more deformity &t resulted in loss of her tongue.Jury returned a verdict for plaintiff.

Do what patient says

Parmley vs. Parmley (1945) 4DLR81.

A patient requested that two of his teeth be removed. The dentist found all the upper teeth in a stage of advanced periodontitis and mobility. He extracted all the teeth. The dentist was held liable.

Res Ipsa Loquitor : (The case speaks for itself)

Patient went to get wisdom tooth extracted. After extraction of tooth a part of root was left behind. The plaintiff relied on the doctrine of Res Ipsa Loquitor. The fact that root fracture was caused in process of extraction of the tooth was not in itself any evidence of negligence.

Tooth extraction was performed under anaesthesia. During operation, a throat pack was swallowed or inhaled by him. In consequence he died of asphyxia. Ample evidence proved that throat pack was too short. Dentist was liable. He had charged handsomely but treatment supplied was utterly unsatisfactory.

Criminal Negligence

Not only has the doctor made a wrong diagnosis and treatment, but also that he has shown such gross ignorance, gross carelessness or gross neglect for the life and safety of the patient that a criminal charge is brought against him. For this he may be prosecuted in a criminal court for having caused injury to or the death of his patient by a rash and negligent act amounting to culpable homicide under Section 304-A of the Indian Penal Code. Some examples are as follows

a. Injecting anesthetic in fatal dosage or in wrong tissues.
b. Amputation of wrong finger, operation on wrong limb,removal of wrong organ, or errors in ligation of ducts.
c. Operation on wrong patient.
d. Leaving instruments or sponges inside the part of body operated upon.
e. Leaving tourniquets too long, resulting in gangrene.
f. Transfusing wrong blood.
g. Applying too tight plaster or splints which may cause gangrene or paralysis.
h. Performing a criminal abortion.

Fictitious Cases

The below are some of the fictitious cases which can commonly occur in dentistry and how the law will react to them.

1) A 7 years old child with a painful deciduous 2nd Molar. The den-tist extracts the tooth and sends the patient home. The pre-molar gets impacted due to mesialisation of the permanent molar. The parent sues the doctor.

RULING: The dentist extracting deciduous tooth itself does not indicate negligence.There are two schools of thought regard-ing this. Normally R.C.T would be the choice but patient com-pliance or tissue damage might be facts that would have re-sulted in the removal. The dentist will be negligent for not providing the space maintainer to the child and/or not referring the child to an orthodontist or pedodontist.

2) A 25 year old boy with several decayed teeth, is in a hurry to go out of India. The dentist treats his severely damaged teeth but not the teeth which are minimally decayed. The patient sues the dentist.

RULING: The dentist can be negligent for tort and contract. It was the duty of the dentist to inform the patient about those mini-mally decayed teeth to be filled. This failure to inform is liable in tort and contract, because the doctor failed to inform, which resulted in further damage to the tooth.

3) A 45 year old female with upper central incisor is perio compromised. The dentist doing her work does scaling and curet-tage and does not send her to a periodontist for surgery be-cause of the fear that the periodontist (who is doing general practice) may not refer the patient back. After 3/4 months, teeth become damaged and eventually she needs perio sur-gery and new ceramic bridge units.

RULING : This is a case of negligence since there is a failure to refer and to treat. The court will not see the reason behind this fail-ure to refer.

4) A dental surgeon places an implant after attending a 3 days course and receiving a certificate. The implant fails.

RULING: The ruling is questionable and remains to be seen; whether the judge will differentiate between a 3 day implant workshop and a comprehensive hands on course?

Discussion

Professional standard of care is generally that standard of care or skill that is laid down by a body of professionals on

behalf of the medical profession. If skill and knowledge fall below this established standard it will be considered to be negligent. A dentist cannot adopt a procedure merely because it is customary. Because a particular procedure has been done for many years, does not make it an acceptable practice. Acceptable practices on the other hand are not only time tested but also scientifically sound. An acceptable practice is usually the product of evidence based medicine or dentistry as opposed to customary practice, which is usually anecdotal. Heath care worker is under a duty to use that degree of skill which is expected of a reasonable competent practioner in the same class which he belongs, acting in the same or similar circumstances. Carelessness is passive where as recklessness is an active act both however are not intentional and is therefore is used to describe negligence. A careless person may not think of eventuality while being careless. On the other hand the reckless person is fully cognizant of the injury that his act may cause, but still takes the risk of possible injury. In some situations negligence arises fully or in part due to the patients fault and this is called as contributory negligence e.g. when a patient refuses to take a prescribed medication after extraction resulting in post operative infection. [6,8,9,11-13]

If a patient develops a cardiac arrest during a dental procedure, the dentist must remain with the patient and initiate resuscitation even while someone goes for help. If the dentist leaves the patient to look for help, it will be deemed abandonment. Another common complaint is the failure to give advice clearly, resulting in complications. Dentists must clear give instructions regarding the prescription, diet and post-operative care. Foreign bodies such as amalgam in tooth sockets, broken root canal instruments, bur tips in bone etc can invite accusations of negligence. Unlike foreign bodies in abdomen, e.g. Like scissors or pads, the foreign bodies in dentistry are not of great significance. Some endodontic specialists advice retaining the broken reamers if it cannot be retrieved by conventional techniques. Foreign bodies in other parts of the body are however viewed seriously and indicate negligence per se or Res ipsa Loquitur (the facts speak for itself). Accidental ingestion of crowns, dental instruments, teeth etc. can also be construed as negligence. [10,13-16]

To use injections is very common procedure in dentistry. One of the disadvantages of injections is that it cannot be retrieved, once given. The obvious advantage is that it is fast acting and often needs to be given in emergencies. The injections may be intramuscular, intravenous, subcutaneous, injections into tissue planes etc. Injections are unfortunately the cause for many negligence suits. Some of the unwanted complications resulting from injections may be Anaphylaxis, Local pain and swelling, Injection of wrong substances, Inability to effect venipuncture, Infection and abscesses at site of injection, Broken needles, Wrong site of injection, Wrong route of injection and Wrong dose.

Prescription is one of the most common acts of a doctor. If prescriptions are not clear and if they do not have proper instructions, the doctor is deemed to have been negligent. Moreover prescriptions are documentary evidence and therefore easy to prove. doctors/dentists should be careful when prescribing drugs. The information given to a doctor is privileged information and it can be breached only in exceptional situations. The doctor and dentist is legally and ethically bound by confidentiality. Information about patients, released in the interest of public safety is not breach of confidence. In fact, in some situations failure to inform is construed as negligence by the doctor/ dentist.

Emergency is not readily defined. It is a relative concept. A dental emergency such as reimplantation of a tooth may not be perceived as an emergency by a trauma team dealing with a femur fracture. Yet the loss of the tooth may have far reaching consequence on the individual. A doctor/dentist is bound by law and ethics to deal with emergencies. Failure to deal with emergencies can attract clauses of negligence against doctors even if there is no contract between the doctor and patient. The good samaritan law in the USA was legislated to protect doctors and lay persons who go to the aid of critical patients outside the sphere of the hospital. According to this law any procedures done in good faith cannot invite malpractice suits. [16,17]

Medical professionals fully agree that efforts should continue so that the master (human body) can be served even better. If the master losses faith in them, their very existence will be threatened.

Refeferences

1. Kim Forrester, Debra G. Essential of law for health professionals. 3rd ed. Elsivier pub.2010
2. Johnston JW. The ethics of a doctor's due diligence. J Mich Dent Assoc. 2010 Feb;92(2):16.
3. Law.Manchester.ac.uk. accessed 25/7/10.
4. Kerry J. Breen, Vernon Plueckhahn, Stephen Cordner. Ethics, law, and medical practice. 1st ed. Elsvier publ. 1997
5. Ward P. To engage or not to engage--a modern representative's dilemma. Br Dent J. 2009 Dec 12;207(11):515.
6. Gamba TW. Am I ethically bound to discuss amalgam restorations with my patients? J Am Dent Assoc. 2009 Dec;140(12):1544-6.
7. Nilendra Kumar and Neha Chaturvedi. A to Z of Law in Management. Manas Publications, 2004, 1st ed, 322 p.
8. Banwari Lal. An Introduction to Law and Bioethics. Cyber Tech, 2009, 1st ed, 256 p.
9. George P. Medical law for dental surgeon. Jaypee publ, 2004, 1st ed, 13 p.
10. Dhirajlal and Ratanlal. Criminal Procedure Code. 1st ed.
11. George Gluck, Warren M. Jong`s Community Oral Health. Mosby publ, 2010, 5th ed, 440p.
12. Bakshi PM, SURAJ AB. HEALTH LAW AND ETHICS. TILEM. National law school of Indian university, Bangalore.
13. Joshi, Mahendra K. A-Z Medical law 2000. Joshi 2000. 1st ed, 148p.
14. http://www.health.state.ny.us/regulations/task_force/health_care_p roxy/guidebook/. Accessed 20/7/10.
15. Pandit MS, Pandit Shobha. Introduction to law, medico legal cell, symbiosis center health care, Pune. 2002.
16. I. Kennedy. Medical Jurisprudence (cases and materials). Mosby publ, 1st ed.
17. Rule, James T. & Veatch, Robert M. Ethical Questions in Dentistry. Quintessence publ, 2nd Ed, 235 p.