

- The term medical malpractice covers all the failures in the conduct of doctors, where it impinges upon their professional skills, ability & Relationship.
- Divided into two broad types:
 - (a) Professional misconduct
 - (b) Medical negligence

S.No.	Feature	Professional negligence	Infamous conduct
1.	Offence	Absence of care and skill or willful negligence	Violation of code of Medical Ethics
2.	Duty of care	Should be present	Need not be present
3.	Damage to person	Should be present	Need not be present
4.	Trial by	Courts—civil or criminal	State Medical Council
5.	Punishment	Fine, imprisonment or both	Erasure of name or warning
6.	Appeal	Higher court	MCI and Central Government

Professional Negligence:

- Absence of reasonable care and skill or willful negligence of a medical practitioner in the treatment of patient which causes bodily injury or death of patient.
- Consists of two acts:
 - (a) Not doing something that a reasonable man, under the circumstances would do (act of omission)
 - (b) Doing something which a normal prudent man under the circumstances would not do
(Act of Commission)

- A/c to Black's law Dictionary, medical negligence requires that the plaintiff (patient) establish the following (4D's):
 - (i) Existence of physician's duty to the plaintiff, based on the existence of physician-patient relationship.
 - (ii) Applicable standard of care and its violation (dereliction of duty)
 - (iii) Damage (a compensable injury)
 - (iv) Causal Connection between the violation of care and the harm complained of (Direct causation)
- Types of Professional Negligence:
 - (a) Civil (lack of skill/care)
 - (b) Criminal (Gross carelessness / willful negligence)
 - (c) Contributory (Doctor & Patient contributed to Negligence)

S.No.	Feature	Civil negligence	Criminal negligence
1.	Offence	No specific and clear violation of law	Must have specifically violated a particular criminal law in question
2.	Negligence	Simple absence of care and skill	Gross negligence, inattention or lack of competence
3.	Conduct of physician	Compared to a generally accepted simple standard of professional conduct	Not compared to a single test
4.	Consent for act	Good defense, cannot recover damages	Not a defense, can be prosecuted
5.	Trial by	Civil court	Criminal court
6.	Evidence	Strong evidence is sufficient	Guilt should be proved beyond reasonable doubt
7.	Punishment	Liable to pay damages	Imprisonment, fine or both
8.	Contributory negligence	Defense for doctor	Not a defense
9.	Double jeopardy*	Can be tried twice for crime	Cannot be tried twice for the same crime
10.	Damage	Repairable damage or harm to patient	Irreparable damage to the patient
11.	Dispute	Between two parties in their individual capacities	Between the state and the offending doctor
12.	Complainant	Sufferer party is the complainant	Public prosecutor on behalf of the state is the complainant

Examples of Medical Negligence:

General Errors

- Inadequate clinical records and failure to examine the patient himself/herself.
- Failure to attend a patient with consequent damage.
- Failure to admit to hospital when necessary.
- Failure to obtain informed consent for any procedure.
- Making a wrong diagnosis in the absence of skill and knowledge.
- Administration of incorrect type/quantity of drugs, especially by injection.
- Failure to immunize and perform sensitivity tests.
- Failure to act on radiological or laboratory reports.

Medicine

- Failure to diagnose myocardial infarcts and other medical conditions.
- Failure to refer a patient to hospital or for specialist opinion.
- Toxic results of drug administration.

Surgery

- Delayed diagnosis of acute abdominal lesions.
- Retention of instruments, tubes, towels, sponges and swabs in operation sites.
- Operating on the wrong patient, wrong side of the body, wrong limb, digit or even organ.
- Failed vasectomy, without warning of lack of total certainty of consequent sterility.
- Diathermy burns.

Obstetrics and Gynecology

- Unwanted pregnancy due to failed tubal ligation.
- Complications of hysterectomy—ureteric ligation and vesico-vaginal fistulae.
- Brain damage in the newborn due to hypoxia from prolonged labor—fear of litigation for this has resulted in a higher rate of caesarean.
- Mismanagement of delivery, especially under the influence of alcohol/drug.
- Performing abortion without indication (criminal abortion).

Orthopedics and Emergency Medicine

- Missed fractures, especially of the scaphoid, skull, femoral neck and cervical spine.
- Over-tight or prolonged use of plaster casts resulting in tissue and nerve damage.
- Undiagnosed intracranial hemorrhage.
- Missed foreign bodies in eyes and wounds, especially glass.
- Inadequately treated hand injuries, particularly tendons.

Anesthesiology

- Hypoxia resulting in brain damage.
- Neurological damage from spinal or epidural injections.
- Peripheral nerve damage from splinting during infusion.
- Incompatible blood transfusion.
- Incorrect or excessive use of anesthetic agents.

Euthanasia (Mercy Killing) :

- Euthanasia denotes producing painless death of a person suffering from hopelessly incurable & painful disease.
- Can be (a) Active euthanasia
(b) Passive euthanasia

S.No.	Feature	Active euthanasia	Passive euthanasia
1.	Definition	Positive merciful act, to end useless suffering or a meaningless existence	Discontinuing or not using extraordinary life-sustaining measures to prolong life ³²
2.	Principle	It is an act of commission	It is an act of omission
3.	Procedure	Administration of lethal doses of opium/barbiturate/sodium thiopental and then a muscle relaxant	Allowing death by not resuscitating a terminally ill or incapacitated patient or defective newborn infant
4.	Characteristic feature	Using measures that would hasten death	Not using measures that would delay death
5.	Followed in	Netherlands and Belgium	India and in some states of US (e.g. with holding tube-feeding)

* Arguments against Euthanasia:

- (i) Against medical ethics
- (ii) May be used to commit murder
- (iii) May become non-voluntary
- (iv) Rejection of Importance & Value of Human life
- (v) Means of Healthcare cost containment.

* Reasons for Euthanasia:

- (i) Unbearable pain
- (ii) High cost of medical treatment
- (iii) Right to commit suicide
- (iv) People should not be forced to stay alive.



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