

Medical Law and Ethics

1. Functions of NMC or MCI or IMC-

- i. Maintenance of Indian Medical Register
- ii. Regulation of standard of undergraduate and postgraduate medical education.
- iii. Permission for establishment of new medical college, new course of study and increase in seats.
- iv. Recognition of medical qualification granted by Universities in India.
- v. De-recognition of medical qualification.
- vi. Recognition of foreign medical qualifications under the scheme of reciprocity.
- vii. Prescribes minimum standards of professional conduct, etiquette and a code of ethics for medical practitioners.
- viii. It is empowered to issue certificates of good conduct and character to medical students / doctors going abroad for higher studies / service.
- ix. It sponsors and organizes continuing medical education (CME) programmes for medical practitioners.
- x. Training the medical college faculty upto the level of Associate professors in MCI basic workshop in Medical Education Technologies.

xi. Appellate powers - It advises the Central Health Ministry when an appeal is made by a medical practitioner against the decision of the SMC on disciplinary matters.

2. Professional negligence-

- The failure to exercise reasonable care and skill of an ordinary prudent medical practitioner in the circumstances; a breach of duty to act with a care appropriate to the situation, which resulted in bodily injury or death of the patient.
- Negligence consists two acts :
 - a) Act of omission - not doing something that a reasonable man, under the circumstances would do.
 - b) Act of commission - doing something which a reasonable prudent man under the circumstances would not do.

Key elements -

- i. Duty of care - the doctor has a responsibility to provide proper care to the patient.
 - ii. Breach of duty - the doctor fails to provide the expected standard of care.
 - iii. Causation - the breach of duty leads directly to injury or damage.
 - iv. Damage or loss - the patient suffers harm due to the doctor's negligence.
- Negligence in diagnosis, treatment, surgery and care are noticed.

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- Example of Professional negligence :

A surgeon performing an operation without proper sterilization may cause infection and harm to the patient. If this happens due to carelessness & not an unavoidable complication, it is professional negligence.

Types →i) Civil Negligence →

- Civil negligence occurs when a person's failure to exercise reasonable care or skill causes harm, injury or loss to another person, leading to liability in a civil court.
- It is based on the breach of duty that causes damage.
- The affected person may file a lawsuit claiming compensation.
- The focus is on restoring the injured party rather than punishing the offender.
- Ex: A doctor's carelessness results in prolonged illness or additional medical expenses.

ii) Criminal negligence →

- Criminal negligence refers to an act or omission where a person's disregard for the safety or life of others amounts to a punishable offense under criminal law.
- It involves gross negligence or recklessness.
- It is not just a failure but a severe deviation from accepted standards.
- Punishment includes imprisonment or fines, as described in the penal code.

- Ext Performing surgery without necessary expertise, leading to death.

Difference b/w Civil negligence and Criminal negligence —

Differentiation 1.2: Civil and criminal 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

3. Doctrine of Res Ipsa Loquitor-

- Generally professional negligence of a doctor must be proved in the court by expert evidence of another physician.
- The patient need not prove negligence in case where the rule of Res Ipsa Loquitor applies, which means "little thing or fact speaks for itself".
- It applies to both civil and criminal negligence.
- Error is so self-evident that the patient's lawyer need not prove the doctor's guilt with medical evidence. The doctor has to prove his innocence.
- To prove Doctrine of Res Ipsa loquitor, the following conditions should be satisfied:
 - i) That in absence of negligence, the injury would not have occurred.

- ii) Patient has not contributed to negligence.
- iii) Doctor had executive control of the circumstances or injury producing instruments or treatment.

Examples →

- i) Leaving a pair of scissors in abdomen.
- ii) Wrong-site surgery.
- iii) Failure to remove swabs during operation, causing complications, or death.
- iv) Blood transfusion misadventure.
- v) Prescribing an overdose of medicines producing ill effects.

Importance →

- It protects patients when direct proof of negligence is hard to obtain.
- It ensures accountability of medical professionals.
- It encourages hospitals and doctors to maintain proper care standards.

4. Vicarious liability-

- Liability for act of another.
- An employer is responsible not only for his negligence, but also for the negligence of his employees, if such acts occur in the course of the employment and within its scope, by the principle of respondeat superior (let the master answer).

Conditions to be satisfied →

- i) There must be an employer-employee relationship.
- ii) the employee's conduct must occur within the scope of his

employment.

ii) While on the job.

Examples →

- i) A hospital is responsible if a nurse administers wrong drug to a patient.
- ii) Principal doctor responsible for assistant doctors wrong surgery performance.
- iii) When two doctors practise as partners, each is liable for negligence of the other.

Importance →

- i) Protects patients by ensuring that healthcare institutions maintain high standards.
- ii) Encourages employers to train and supervise their staff properly.
- iii) Provides compensation to injured patients when direct fault is hard to prove.

Limitations →

- The employer is not liable if the act is outside the scope of employment.
- Independent contractors may not always be covered.
- The employee's personal actions may not be attributed if they are not related to professional duties.

5. Consent-

- Consent means voluntary agreement, compliance or permission.
- In latin it mean to feel or sense with.

- As per the Section. 13 of the Indian Contract Act 1872, two or more persons are said to consent when they agree upon same thing in the same sense (meeting of the minds).

Types →

- Broadly consent is of two types →

a) Implied:

- When the patient present himself at the doctor's clinic or OP it is held to imply that he is agreeable to examined.
- This mean it imply to procedures like inspection, palpation, percussion and auscultation.
- It doesn't imply to other examinations like rectal & vaginal, & withdrawal of blood for diagnostic purposes. In these cases expressed permission should be obtained.

b) Expressed:

- Specifically stated by the patient in distinct and explicit language. It can be
 - i) Oral / Verbal consent - obtained for relatively minor examinations or therapeutic procedures. preferably in the presence of disintegrated party, like patients attendant or nurse.
 - ii) Written consent - Obtained for all major procedures, general anesthesia, operations etc.

Informed Consent →

- Informed Consent is a process by which a patient voluntarily confirms his or her willingness to undergo a particular medical

intervention, after having been informed of all the risks, benefits and alternatives.

- The consent must be given by a person who is competent to do so, and it must be obtained without coercion, fraud, or misrepresentation.
- Informed consent is not merely a formality, it is a fundamental requirement in medical practice to ensure that the patient's autonomy is respected.
- Failure to obtain informed consent may result in legal liability for the physician, including charges of negligence or battery.

Exceptions to Informed Consent →

- Emergencies
- Medical examination requested by a police officer of an arrested accused under Sec. 53(1) CrPC.
- Therapeutic privilege
- Therapeutic waiver
- Medico-legal postmortems
- Prisoners
- Use of Placebos.

6. Professional secrecy-

- Professional secrecy is a fundamental principle of medical ethics which obliges the physician to protect the privacy of the patient by not revealing personal or medical information without consent.
- It is an implied term of contract between the doctor & his

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patient.

- Everything said by patient or his family members to a physician in the context of medical diagnosis & treatment is kept confidential.
- Its disclosure would be a breach of trust and confidence.
- The patient can sue the doctor for damages (mental suffering, shame or humiliation) if the disclosure is voluntary, has resulted in harm to patient and is not in the interest of public.
- Disclosure is permitted only when authorized by the patient, compelled by law or required to protect public health or safety.

Importance →

- Maintains trust between doctor and patient.
- Encourages open communication & proper diagnosis.
- Protects sensitive medical information.
- Upholds medical ethics & professional integrity.

Examples →

- i) A patient confesses to a doctor that he has committed rape and asks the doctor not to reveal it.

The doctor must treat the wounds and inform the police because the law overrides secrecy in cases of serious crimes.

- ii) A patient diagnosed with syphilis requests that the doctor not disclose this information.

The doctor must report it as per public health regulations

because disclosure is necessary to prevent spread and protect others.

iii) A person admitted with Gunshot wounds/poisoning asks the doctor to maintain confidentiality.

The doctor must report to the police since such cases are medicolegal and require investigation.

7. Professional misconduct-

- Professional misconduct is any behaviour by a medical practitioner which violates the ethical, moral, or legal duties expected from a professional and which adversely affects the patient's health or public trust in the profession.
- It includes acts that are considered inappropriate, unethical, careless or deliberately harmful.
- A doctor found guilty of misconduct.
- The Medical Council of India has prescribed guidelines, and a breach of these rules constitutes misconduct punishable by disciplinary action.

Examples of Professional Misconduct →

i) Negligence in diagnosis or treatment

- Giving wrong treatment due to carelessness.
- Delaying surgery that leads to patient's death.

ii) Breach of confidentiality-

- Revealing a patient's HIV status to others without his/her consent.

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ii) Unethical relationships -

- Forming personal or financial relationships with a patient that compromise professional judgement.

iv) Overcharging or Exploitation -

- Charging excessive fees or unnecessary procedures for monetary gain.

v) Advertising or Self-promotion to attract patients.

vi) Practising without qualification.

vii) Abandonment - leaving a patient mid-treatment without proper care or handover.

Legal Provisions & Disciplinary Actions →

- Action can be taken under the IMC Act, 1956 or relevant state medical councils.
- Punishments may include:
 - Suspension from practice
 - Cancellation of medical registration.
 - Imprisonment in extreme cases.
 - Financial penalties.

Importance →

- Maintains trust and integrity in medical practice.
- Protects patients from harm or exploitation.
- Upholds ethical standards.
- Encourages responsible behaviour among doctors.

8. State Medical Council (SMC)-

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- The State Medical Council is a statutory body established under the Indian Medical Council Act, 1956, responsible for maintaining the medical register in the state, ensuring ethical medical practice and regulating medical professionals within its jurisdiction.
- Each of these medical councils consists of members elected by the registered medical practitioners and those nominated by the state govt.
- The President and Vice-President of the Council are elected by the members from among themselves.

Functions →

i) Maintenance of Medical Register -

- Registers qualified medical practitioners.
- Issues certificates of registration.
- Ensures only registered practitioners are allowed to practice.

ii) Regulation and Licensing -

- Verifies qualifications and eligibility.
- Approves and renews medical licenses.
- Controls professional practice standards.

iii) Disciplinary actions -

- Investigates complaints of professional misconduct.
- Conducts inquiries and hearings.
- Suspends, cancels or restricts registration upon violation.

iv) Promoting Ethical Practice -

- Encourages adherence to medical ethics
- Advise practitioners on proper conduct.
- Ensures patients confidentiality & care standards.

v) Advisory role -

- Provides recommendations to the govt.
- Suggests improvements in medical education & healthcare policies.
- Guides practitioners on continuing medical education.

w) Public Health Protection -

- Monitors health services in the state
- Ensures safety protocols & medical standards.
- Prevents quackery & unauthorized practice.

9. Euthanasia-

- Euthanasia denotes producing painless death of a person suffering from hopelessly incurable and painful disease.

Types →

- a) Active euthanasia - positive merciful act, to end useless suffering or a meaningless existence.
- b) Passive euthanasia - discontinuing or not using extraordinary life-sustaining measures to prolong life.

It is also classified into:

- Voluntary euthanasia ÷ Wherein the individual requests euthanasia, either during illness or before if complete incapacitation is expected.
- Non-voluntary euthanasia ÷ Where an individual is incapable of perception & feeling, & hence cannot decide or distinguish b/w life & death, such a person cannot give informed consent.

Ex ÷ Euthanasia in brain dead patients.

- Involuntary euthanasia ÷ Where an individual may distinguish b/w life and death and any medical killing is involuntary. It is ethically, morally & legally considered as murder.

Reasons for Euthanasia →

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

10. Malingering-

- It is a conscious planned feigning or pretence to having a disease in order to achieve a specific goal.
- The symptoms are inconsistent with known medical conditions.
- The condition improves in the absence of observation.
- The patient resists diagnostic procedures.
- The patient may refuse further treatment after obtaining desired benefits.

Causes →

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- i. Financial compensation from insurance claims.
- ii. Avoiding military service, work or legal obligations.
- iii. Escaping Imprisonment or punishment.
- iv. Seeking drugs or medical attention.
- v. Gaining attention or sympathy.

Clinical identification →

- i. Discrepancy b/w reported symptoms & clinical findings.
- ii. Uncooperative behaviour with investigations.
- iii. Presence of secondary gains like money, attention or avoidance of responsibilities.
- iv. Improvement without treatment.

II. Malpraxis-

- Malpraxis refers to improper, unethical, or negligent conduct by a medical practitioner, resulting in injury, harm or suffering to the patient.
- It involves actions or omissions that deviate from the accepted standards of medical practice.

Causes / Forms of Malpraxis →

- i. Negligence in diagnosis
- ii. Improper treatment and care
- iii. Surgical errors
- iv. Failure to warn the patient
- v. Breach of confidentiality

vi. Abandonment

vii. Fraudulent practices

Conditions for establishing Malpractice →

- Duty of care : A relationship must exist b/w doctor and a patient.
- Breach of duty : There must be a deviation from the standard of care.
- Causation : The breach must directly cause harm or injury.
- Damage or Injury : The patient must suffer as a result of the breach.

Examples →

- i. Giving wrong medication leading to allergic reactions.
- ii. Performing surgery on the wrong site.
- iii. Failing to monitor vital signs during treatment.

• **12. Cognizable offense-** See in legal procedures chapter.

13. Contributory negligence-

- Contributory negligence is when the patient's own act or neglect has partly caused or aggravated the injury or disease for which he seeks treatment.
- The patient's conduct must have contributed to the harm.
- There must be a causal relationship between the patient's negligence and the injury.

- Liability is shared; the doctor's responsibility may be reduced but not completely nullified.
- It often applies in medico-legal claims related to treatment complications.

Examples →

- A patient ignoring post-operative care instructions, leading to wound infection.
- A diabetic patient not following dietary guidelines, resulting in complications.

14. Penal erasure-

- Penal erasure is the removal or suspension of a medical practitioner's name from the State Medical Register as a punishment for professional misconduct, unethical behaviour or violation of medical ethics and law.

Causes for Penal erasure →

- i. Gross negligence resulting in harm or death of a patient.
- ii. Practising medicine without valid registration or qualification.
- iii. Engaged in fraudulent practices or medical corruption.
- iv. Breach of patient confidentiality.
- v. Conviction for serious crimes like sexual assault or medical fraud.
- vi. Advertising or soliciting patients for profit.

Consequences of Penal erasure →

- The doctor is removed from the register and cannot legally

practice medicine.

- Loss of professional licence and reputation.
- Ineligibility to reapply for registration without proper rehabilitation or court intervention.
- Possible criminal liability if misconduct is of a grave nature.
- Ethical stigma among the peers & the community.

15. Infamous conduct-

- Infamous conduct is any behaviour by a doctor which is disgraceful or scandalous and likely to bring the profession into disrepute.

Examples →

- i. Fraudulent practices like falsifying medical records, claiming false reports or billing for unnecessary procedures.
- ii. Unethical relationships for personal or financial gain or engaging in inappropriate relationships.
- iii. Breach of confidentiality for personal benefit.
- iv. Substandard medical practice.

16. Doctrine of respondent superior-

- The doctrine of respondent superior is a legal principle which holds that an employer is responsible for the acts or omissions of their employees when such acts occur within the course of employment.
- Employer - Employee Relationship: A valid relationship must exist

b/w the hospital (employer) and the healthcare provider (employee).

- The negligent act or omission must have been committed while performing assigned duties.
- Liability of the Employer :- The hospital or institution is held accountable even if the employer was not directly involved in the act.

Example →

- A nurse administering wrong medication while on duty leading to patient's adverse reaction.
- A surgeon making an error during an operation conducted under hospital employment.

17. Dichotomy-

- Dichotomy is a method of classification where a topic is split into two opposing categories to explain medical or legal concepts more clearly.

Importance →

- i. Clarity - helps in better comprehension by categorizing cases or issues.
- ii. Decision making - aids in choosing appropriate legal, ethical, or medical actions.
- iii. Allows differentiation b/w similar conditions for diagnosis, management or reporting.

iv. Simplifies the teaching of medico-legal concepts for students and practitioners.

Examples →

- i. Civil vs Criminal Liability
- ii. Active vs Passive Euthanasia.
- iii. Negligence vs Malpractice.