

## Research Article

# Medical practice and professional liabilities in Bijapur region of Karnataka

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### ABSTRACT

The present study that is Medical Practice and Professional Liabilities in Bijapur Region of Karnataka was carried out in the northern part of Karnataka, details of the cases are collected from the district consumer forum Bijapur between January 1, 1995 and December 31, 2009 (15 years). In each case, complaint of the complainant and response to a complaint by the opponent is studied and analyzed. Date of filing and date of judgment is noted in each case. If needed complainant and opponent were consulted personally for details about the case. The most common cause for litigation was found to be misguided allegation; this can be prevented by proper communication to the patient at first consultation. Hence, it is important to spend more time at first consultation. It is the utmost importance that professional liability claims should be avoided. The lawsuits not only have heavy emotional toll on doctors and patients but on the society as a whole.

**Keywords:** Professional liability, District consumer forum, Professional practice, Medical negligence

### INTRODUCTION

Professional liability is defined as legal obligations arising out of a professional's errors, negligent acts, or omissions during the course of the practice of his or her professional practice. Medical negligence is absence of reasonable care and skill, or willful negligence of the medical practitioner in the treatment of the patient that causes bodily injury or death of the patient. Negligence is an integral part of human nature and doctors are no exception to this. Consumer Protection Act (CPA) 1986 was enacted by parliament to provide for better protection of the interest of consumers in the background of guidelines contained in the consumer protection resolution passed by U.N. General Assembly on April 9, 1985.

Medical profession was not included in this act at the beginning. However, due to the landmark judgment

of Supreme Court in November 1995 (Indian Medical Association vs. V. P. Shantha) the medical practice, barring some minor exception came within the ambit of CPA.<sup>1</sup> In medical practice, professional liability arises when there is medical negligence of civil nature, the patient claims compensation for the damages suffered by him, in terms of money. This compensation can be sought by a lawsuit either in a civil court or in a Consumer Redressal Forum/Commission in India.

Defendant physicians may experience wide range of distressing emotions and increased stress, which can disrupts their personal lives and lives of their family, their relationship with patients and their medical practice. Medical professional liability case usually take several years to get resolve, this stressful period can seem interminable. According to American College of Obstetrics and Gynaecology 1999 survey on professional liability

conducted by Princeton Survey Research Association, 76.5% of its members had at least one professional liability claim, filed against them during their career.<sup>2</sup>

## METHODS

Cases which were filed and judgment given in the District consumer forum Bijapur between January 1, 1995 and December 31, 2009 (15 years). Details of the cases are collected from the district consumer forum Bijapur. In each case, complaint of the complainant and response to a complaint by the opponent is studied and analyzed. Date of filing and date of judgment is noted in each case. If needed complainant and opponent were consulted personally for details about the case. Details about the professional liability claims for various specialties are received from the Oriental Insurance Company<sup>3</sup> and New India Insurance Company Limited.<sup>4</sup>

In each case following points are noted, such as:

1. Misguided allegations
2. Communication failure
3. Documentation defects
4. Practice guidelines
5. Consultations
6. Administrative incompetence and
7. Negligence.

## RESULTS

We studied total 20 cases, which were filed between January 1, 1995 and December 31, 2009 in the consumer forum Bijapur (consumers court) out of which six cases were of general practitioner (MBBS doctors including Ayurvedic and Homeopathy), four cases were of obstetrics and gynecology, four cases were of orthopedics, two cases were of surgery, two cases related medical college, one case of neurosurgery and remaining one case related to quack. Out of the total 20 cases, 15 cases were dismissed, and five cases were compensated monetarily. Among the cases compensated with money, one case was related to obstetrics and gynecology, one case of Orthopedics, one case of Ayurvedic, one case of Homeopathy and one case of quack.

According to Oriental Insurance Company, maximum professional liability is claimed in orthopedics (up to 20 lakhs INR) followed by Surgery (up to 15 lakhs INR), Obstetrics and Gynecology (upto 10 lakhs INR) General Medicine (up to 10 lakhs INR), Urology (up to 10 lakhs INR), Diagnostic labs (up to 10 lakhs INR), Anesthesia (up to 5 lakhs INR), General Practitioner (up to 5 lakhs INR), Radiologist (up to 5 lakhs INR), Ophthalmology (up to 5 lakhs INR), Dental Surgeons (up to 5 lakhs INR), Neurophysician (up to 5 lakhs INR), and ENT surgeons (up to 3 lakhs INR). Hospitals under omission and negligence policy, professional liability claim is up to 25 lakhs (whole hospital) or per patient 10 lakhs INR.

Maximum number of insurers belongs Obstetrics and Gynecology specialty followed by General Practitioner,

General Medicine, Surgery, Orthopedics, Radiologist, Anesthesia, Dental Surgeons, Ophthalmology, Diagnostic Lab, Urologist and Neurophysician. According to The New India Insurance Company Ltd.<sup>4</sup> Total number of Doctors insured for the period 2001-2002 were seven members, for the period 2002-2003 same seven members, for the period 2004-2005 it is increased to 15 members, for the period 2005-2006 17 members, for the 2006-2007 there were 12 members, and for the year 2007-2008 there were 12 members.

Annual premium and sum also insured varies depending upon the specialty which is given in Table 1 (for the year 2007-2008).

## DISCUSSION

Professional negligence is defined as absence of reasonable care and skill, or willful negligence of medical practitioner in the treatment of a patient, which causes bodily injury or death of patient.<sup>5</sup> Negligence is of two types one is civil negligence and second criminal negligence. Civil negligence comes under the purview of consumer forum whereas criminal negligence is tried in criminal court. Liability for negligence arises if the following conditions are satisfied: (1) Duty; existence of duty of care by doctor, (2) dereliction; the failure on the part of doctor to maintain applicable standard of care and skill, (3) direct causation; the failure to exercise a duty of care must lead to damage, (4) damage; damage should be of a type that would have been foreseen by a reasonable physician.<sup>6</sup>

Out of 20 cases only five cases were compensated monetarily. Among those compensated cases, two cases were of general practitioner, one case was of obstetrics and gynecology, one case of orthopedics, and case-related to quack. Among 20 cases major causes for professional liability claims are misguided allegation (seen in 13 cases), communication failure (seen in 6 cases), documentation defects (seen in 3 cases), breach of practice guidelines (seen in 2 cases), administrative incompetence (seen in 2 cases), negligence (seen in 2 cases) and consultation (seen in 1 cases). The study by ward<sup>7</sup> showed that 25% of the total lawsuits were indefensible due to the reason such as (a) Breach of the standard (17%). (b) Lack of documentation (3%). (c) combination of both the causes

**Table 1: Annual premium and sum insured.**

Specialty	Total sum insured (INR)	Annual premium (INR)
Obstetrics and gynecology	7,00,000	1400
Surgery	10,00,000	3000
Urosurgery	10,00,000	1600
Orthopedics	5,00,000	1000
Pathology	10,00,000	1400
Ophthalmology	3,00,000	600

(5%). B-Lynch et al.<sup>8</sup> in their analyses described that 46% claims were mere misguided allegation, while 19% of cases were due to incompetent care, in 12% there was error of judgments and 7% of cases resulted due to failure of communication.

According to The New India Insurance Company Ltd., maximum annual premium was paid by the General Surgery, followed by Urosurgery, Obstetrics and Gynecology, Orthopedics, Ophthalmology, and Pathology. If we look into annual premium in US<sup>9</sup> (1998-1999), maximum annual premium was paid by Obstetrics and Gynecology (35,200[\$]), followed by orthopedic (27,300[\$]), General Surgery (19,700[\$]), Pediatrics (12,300[\$]), General medicine (9,400[\$]), and Psychiatry (5,500[\$]).

## CONCLUSION

The major causes observed under different studies of Professional Liability Claims can be enumerated as:

1. Misguided allegations
2. Communication failure
3. Documentation defects
4. Practice guidelines
5. Administrative incompetence
6. Negligence
7. Consultation and others.

Among these the most common cause is misguided allegation, this can be prevented by proper communication to the patient at first consultation. Hence, it is important to spend more time at first consultation. It is the utmost importance that professional liability claims should be avoided. The lawsuits not only have heavy emotional toll on doctors and patients but on the society as a whole. According to New Indian Insurance Company, total annual premium and total sum assured is almost doubled from the year 2001-2002 to 2007-2008. Escalating liability premiums and awards drive up the cost of medical care. This can result in limited access to good medical care, and when the care is available, it is more expensive. Thus, efforts must be made to avoid such a situation by taking preventive steps.

It shows that no single measure is sufficient to tackle this because their level and reasons are so varied. So it is important to have a comprehensive approach in order to minimize professional liability claims. By taking care of the

patient clinically/legally/administratively and especially by improving the above-observed factors, we can minimize the professional liability claims to a large extent.

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