‘Medicine and the Law’ is a forum where readers can ask questions pertaining to legal issues they may face during the course of their medical practice. The answers and clarifications are have been kindly provided by D. Samuel Abraham, (M.A., B.L., M. Phil., PGDPM), Legal Advisor to Christian Medical College, Vellore.

Q1. A female patient has come with an allegation against the management stating that she is pregnant in spite of the tubectomy done in 2010. She had caesarean section done for her first and second delivery following which she had got tubectomy done. This was done by a visiting consultant from another unit. We had charged 6000rs and had given 2000rs charity as well (mentioned in the card). She and her husband are both frustrated and don’t want any more children. They say they are not willing to raise up the 3rd child. Her brother is a lawyer who is claiming compensation. Please give us your advice.

Answer: In a recent judgment of the National Commission titled as Parivar Seva Sanstha & Ors. V/s Jagdish & Ors, the Hon’ble National Commission had held that “merely because a woman who has undergone a sterilization operation becomes pregnant and delivered a child, it does not make her entitled to compensation on account of unwanted pregnancy or unwanted child. Any claim in such types of cases can be sustained only if there was negligence on the part of surgeon in performing the surgery and not on account of child birth. A similar view was taken by Hon’ble Supreme Court in the case titled State of Punjab V/s Shiv Ram &Ors. (2005). The Hon’ble Supreme Court in this case had said that, proof of negligence shall have to be provided. Failure of a surgery due to natural causes would not provide any ground for a claim. Having understood that conception has occurred in spite of the sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed.

Perhaps her husband’s brother who is a lawyer would have relied upon the Judgement and order of the Supreme Court of India in State of Haryana Vs Smt. Santra which was delivered on 24.4.2000 wherein the Supreme Court held that if there is a new born after tubectomy performed for a woman, automatically it would be viewed as negligence on the part of Medical Professionals. However we wish to make it clear that this judgement has been overruled by the Supreme Court of India in State of Punjab V/s Shiv Ram &Ors case.

Therefore, you can point out this and need not worry till you receive any summons or notice from Judicial Forum. In Court also, only the complainant has to prove that there is negligence on the part of the Medical Professionals, on successful submission of proof followed by a judicial order, the question of payment comes; there also appeal provision is there. Do not worry now.

Q2 If a doctor refuses to treat a patient or forcefully refers to another hospital for some reasons (perhaps because the patient cannot afford treatment or patient is not cooperating or lack of treatment systems or because the doctor is not confident with treatment), is it liable for legal action against doctors? What are the legal issues if the doctor is practicing at home without registering his clinic?

Answer: 2 (A) If the Patient is in emergency condition, then the Doctor should try to resuscitate the patient from the emergency condition with his/her competence. As per rule 2.4 of Code of Medical Ethics, 2002, “A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family”.

Also, when a patient is referred to a specialist by the attending physician, a case summary of the patient should be given to the specialist, who should communicate his opinion in writing to the attending physician. (Rule 3.6 of Code
of Medical Ethics). Therefore doctors are not liable for legal actions, if he refers or refuses to give treatment beyond his area of practice.

2 (B) In some states, the Clinical Establishment (Registration and Regulations) Act, 2010, notified by the State Government, registering a clinical establishment is mandatory; otherwise it becomes unlawful. However, there are a few states that have not notified the said act where a doctor can practice medicine in that branch in which he is qualified and registered under the Medical Council Act.

Q-3. There was a fight between two groups of people on the road in front of my Hospital. Someone pierced a sharp instrument into another’s chest. Then everybody left that place. The police brought the injured person to the Hospital for treatment. Suddenly someone called over the phone and demanded that I should not to treat him. What should a doctor do in such a situation? Please advise.

Answer: This appears to be a criminal case. In a criminal case or offence, it is the responsibility of the Sovereign Authority (represented by Police/Public Prosecutors) namely the State, to punish the accused. To punish the accused, all the charges against the accused must be proved before a competent court of law. To prove the charges, (that A has caused an injury to B) , the State has to prove that B sustained the injury by A; for this, the state requires the aid and help of the medical professionals. Such cases are called Medico-legal cases.

From your version, it appears that the Police brought the victim to your hospital for treatment. Therefore, by law you have to extend all medical facilities to the victim according to your competence. If the victim requires specialised service which you do not have, you can inform the Police in writing accordingly so that they will take further action and you will be absolved from any further responsibilities.

Q- 4. (a) What are the preventive insurance covers against CPA/legal suits (CPA= Consumer Protection Act)? (b) Is there any validity of a bond signed by attendant/patient that CPA is not admissible due to low cost treatment (like token fees in Govt. hospital)? (c) Is it mandatory to take medical experts' opinion in passing verdict in CPA against doctors? (d) How is compensation is calculated in CPA?

Answer: 4(a)- Insurance is available to safeguard and protect the Medical Professionals. This is called Professional Indemnity Errors and Omissions Policy. Any notice or summons received from court in connection with Medical Negligence and claim of compensation addressed to doctors/hospital will be handed over to Insurance Company. If there is any award of compensation ordered by a Court, it will be paid by the Insurance Company. In short, the hospital would be indemnified.

4 (b) There is no validity of a bond signed by attended patient that CPA is not admissible due to low cost treatment if you are charging fees from another patient in your hospital. In other words, even if you are treating free for one or a few patients, while charging others, your hospital and its services are amenable under CPA (whereas the Government hospital will come under civil law not consumer law) Any bond which goes against the spirit of existing law would be invalid.

4 (c) It is not mandatory to take medical expert opinion for passing verdict in all CPA cases, however in a complicated question of fact, at the discretion of Presiding Officer, a case can be referred for expert opinion from other 3rd competent person.

4 (d) Compensation is calculated, generally, according to the age, economical status, and family responsibilities of the patient or patient who died. Normally, the persons who receive less earning without family would receive less compensation whereas a person who is earning good salary coupled with many years of further service with large dependant family members would receive more. Therefore, doctors and eminent lawyers under the aegis of the Institute of Medicine and Law have requested the Union Government to fix a cap to the maximum limit for awarding compensation.

Q-5. In a school dormitory, a parent bashed up a young teenager while separating 2 boys who were fighting. The boy needed suturing and medical care by the school doctor. Does the doctor have to report to the police or go through the school administration?

Answer: This case comes under Medico Legal area. Even though the doctor is appointed as an employee or a consultant engaged by a School to take care of health requirements of a school boys, he would be considered as an
independent Medical Professional in respect of treating a victim under Medico legal arena. One way service – wise he is under the administrator of the School whereas automatically he is a doctor who is attending a Medico-Legal case. If the affected party (student) with great influence reports this matter to Police later, the doctor would be held responsibility under relevant provisions of criminal law. Therefore, the best course is you can send a Medico-legal intimation to the Police through the management of school and a copy may be forwarded to Police directly.

SOME PRECAUTIONARY STEPS TO AVOID LITIGATION UNDER THE CONSUMER PROTECTION ACT

1. Once a claim is made to provide certain medical facilities in a clinic/hospital, the time limit should be mentioned. This time limit implies that the necessary equipment, manpower and medical and paramedical staff are all available during this specific period.

2. The responsibilities of the Medical Practitioner extend to the post-operative period also; therefore, he should ensure that he mentions the date for the patient to report to the hospital in post-discharge examination while issuing a discharge summary.

3. Certain types of negligence like leaving behind sponges, wires or instruments inside the patient’s body attract compensation/damage only to the surgeon; therefore such negligence should be avoided.

4. Medical assessment should be made only in an objective manner guided by extensive tests and examinations.

5. When attending to a patient for the first time, the medical professional must not be influenced by the results of the tests conducted in a diagnostic centre earlier. Such results must be corroborated by conducting other tests.

6. Pregnancy should be ruled out before subjecting the patient to X-ray.

7. The medicine and the dosage should always be checked before administering to a patient.

8. The site of injection must be ascertained.

9. While dealing with an agitated patient, steps must be taken to calm him down before administering injection; otherwise, a broken needle may be a valid ground for claiming compensation.

10. While doing tubal ligation or sterilization, the patient should be told that there is no guarantee for non-pregnancy.

11. To avoid false claims at a later date, test for HIV/Hepatitis B should be arranged before treating the patient especially before blood transfusion or surgery.

12. The medical professional must continuously update his knowledge by reading textbooks/journals, reports of seminars/association meetings etc.

13. If a doctor feels that he cannot treat a patient, the patient must be referred to specialist. A record to this effect should be kept.

14. If a decision is made to take advice from other units after holding discussions about treatment procedures, it should be recorded clearly in the chart.

15. In accident cases, statements given by patients or people who brought them to the hospital should not be recorded. Such cases should be reported to the police, facts verified from them and then only recorded. In many cases, the statement given by those who brought patients to the hospital, proved to be false later.

16. The doctor’s instructions to a nurse about a specific matter should be recorded in the Nurse’s chart so that relieving Nurse will know about such instructions.

17. The history of any allergy must be recorded so that other consultant/doctor will become aware of it.

18. The names of drugs should be written clearly. Wrong interpretation of illegible handwriting has led to wrong administration of drugs thereby causing death of the patient caused huge monetary damage to the hospital in many instances.

19. If the patient is uncooperative in following the prescribed medications/tests/treatment, this must be recorded in the chart, getting it in writing from him in the local language and the patient discharged.

20. The medical records of patients who underwent major operations/eye operation should be preserved for at least 7 years; the three year mandatory period is not enough. This is in the larger interest of the hospital.

21. The medical professional must not hesitate to treat emergency cases as it is life which is at stake. The patient should be treated with the available facilities at the treating hospital and referred for specialist care if required. Fees can be claimed later.

22. A neatly designed consent form with proper means of recording is necessary for each and every major treatment/examination. Always a legally valid consent form designed by professionals must be used.

23. If a medical doctor receives legal/court notice, he should always consult a lawyer before replying to the notice.