Chapter 143

Ethics in Legal Issues: Do’s and Don’ts

TN Ravisankar

INTRODUCTION

A physician is a person who treats an ailing individual based on the clinical signs, with the necessary support from biochemical and pathological investigations. "Ethics" are an outcome of years of social experience, by our forefathers who were in this profession. The changing mindset of the population to acquire wealth for a better life has crept into the medical profession. Doctors were practicing independently with humane care and compassion, but with the invention of gadgets and growth of biotechnology, they transformed their profession into a corporate module. Thus, in the medical profession ethics got crumbled in the hands of administrators, finance managers, investors, financial institutes, etc. The unsatisfied patients who always want the best have become litigants, and therefore, legal issues confront the medical profession. This has become a universal phenomenon.

Ethics when bypassed result in litigation and legal issues. Judgment in cases stressing upon the ethics will be given forth in this chapter to stress upon the value of ethics—Do’s and Don’ts are based only on the ethical issues.

Medical Council of India (MCI) 2002 Regulation 3.3—punctuality in consultation: Utmost punctuality should be observed by a physician in making themselves available for consultations.

Consultant must visit his patient at regular intervals and also based on provisional diagnosis, appropriate treatment can be started without waiting for the final diagnosis—Sali Rourkela Steel Plant v/s Trinath Das Mohini.

Drugs and treatment protocols acceptable to the medical world, but not easily available in India, can be avoided. It is advisable to record in the patient’s medical record.

Do not do private practice if you receive nonpracticing allowance from your employer. Do your service to your employer and patients with sincerity.

Specifically record any abnormality or deterioration in patient’s condition observed during examination—Ram Gopal Varshney v/s Lasor Sight India Pvt Ltd.

In appropriate cases, confirm the initial diagnosis by conducting requisite tests before starting treatment—Dr VK Ghodekar v/s Smt Sumitra Pralhad Korgaonkar.

Do record all the vital signs as well the negative signs favoring your diagnosis in inpatients as well as outpatients records. It will be a documentary evidence for justifying your diagnosis.

In case of any doubt, it is advisable to repeat diagnostic tests and procedures—Tagore Hospital & Anr v/s Harnam Singh & Anr.

Whenever scans/films/X-rays are handed over to the patient/relatives/attendant, the date of giving and receiving back any of these must be duly recorded. Before handing over, a proper receipt from the person who is receiving must be taken—HS Tuli v/s Postgraduate Institute of Medical Education & Research & Ors.

Report of investigation and X-ray/MRI/CT scan must not only be preserved, but the finding must also be recorded in the case sheets of the patients—Anil Kumar Gupta v/s Dr Mukesh Jain.

Do investigations when needed and have documentation in handing over the diagnostic reports, as the cost for the same is borne by the patients. It is their right to possess. If you need the report for any reference keep a scanned copy in your computer or a xerox in your patient’s folder.

Patient’s refusal to conduct any investigation that is advised must be promptly recorded—Basudeo Prasad Maheshwari v/s Indraprastha Apollo Hospital & Ors.

Do not miss to record, if the patient refuses to follow your advice. Do get it signed as it will be the vital documentary defense to prove the value of your word. A patient unwilling to follow your advice may be a potent litigant.

Based on provisional diagnosis, appropriate treatment can be started without waiting for the final diagnosis—Sali Rourkela Steel Plant v/s Trinath Das Mohini.

Drugs and treatment protocols acceptable to the medical world, but not easily available in India, can be avoided. It is advisable to record these reasons in the patient’s medical record.

In one civil case, nonavailability of bubble gas in India when surgery was performed was accepted as a good defense by the court—Dr Sathish C Gupta v/s Raj Kumar Narula.

Drugs and treatment protocols that are still in experimental stage must be avoided—Dr Sathish C Gupta v/s Raj Kumar Narula.

Do treat the patient justifying your clinical knowledge. Do not delay the treatment, waiting for the diagnosis report—coronary
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artery syndrome is a clinical diagnosis without ECG/enzyme evidence, hence treatment should be initiated.

On observing the reaction of a drug, take appropriate remedial steps immediately. Duly record both the reaction and the steps taken, in the medical records of the patients—Gaurav v/s Escorts Ltd Medical Centre & Anr.

Take extra caution while changing medicine, especially regarding side effects—Dr Janak Kantimathi Nathan & Ora v/s Murlidhar.

While prescribing a drug, especially sensitive drugs, duly inform the patients and record in the prescription note.

a. Common side effects of the drug
b. Mode and time of taking the drug
c. Food, alcohol, etc. that should be avoided and other such precautions.

Dr VK Ghodekar v/s Smt Sumitra Pralhad korgaonkar

Do document at every stage, if there is any drug reaction.

Relatives of the patients must be kept involved with the treatment and appropriately informed. The root cause for maximum number of cases for medical negligence is poor communication of doctors with patients—Dr Sathy M Pillai & Anr v/s S Sharma & Anr.

Do communicate to the patients and in critical care with the attendees and duly get it signed. Documentary evidence is a must. This is the simple protocol of ISO certificate. DIL/transferring for want of infrastructure must be informed and duly signed by the attendant.

Take separate and specific consent for surgery/procedure and for transfusion of blood—M Chinnaiyan v/s Sri Gokulam Hospital & Anr.

Get a separate consent for transfusing blood or its products. A consent for the surgery or procedure is also not a blanket consent for transfusion. Hospital staff may be totally unaware of this law.

In law, handwritten materials, has more evidentiary value over typewritten materials—Dr Sathy M Pillai & Anr v/s S Sarma & Anr.

Physician should explain the risk involved in doing a procedure and also about the alternate methods of treatment available. Decision taken by the patient or by the relatives on behalf of the patient must be written and duly signed by the concerned party with witness. The staff of the hospital or any other employee should not affix his signature as witness, as it is not accepted by the law (as they fall under the service provider category).

No consent of patient relatives/friends/attendant is required for conducting a postmortem in case of any unnatural death. There may be requests or at times even pressure, not to inform the police but obliging to any such request would amount to illegality. In case of any unnatural death, the decision to inform the police lies on the doctor/hospitals/nursing home—Dr Sheruben Jamindar & Anr v/s Nalinbhai Hiralal Modi & Ors.

The request for autopsy or postmortem must be initiated by the physician and not from the deceased relatives or their legal heir. Physicians can only treat and cannot decide the cause of injury as natural and let go the process of postmortem. Do inform the police if you have suspicion.

All doctors are duty bound to treat. Hospitals/nursing homes are bound to admit accident/serious patients—Dr M Shantha Kumar & Anr v/s Capt VP Mohan.

Life is of paramount importance and a legal issue cannot be a hindrance for providing the necessary help to save the life of an individual.

In case of emergency, advice from a consultant can be taken over telephone but the same must be duly recorded in writing—T Rama Rao v/s Vijay Hospital & Anr.

Proper protocols must be developed and followed by hospitals and investigations advised by a consultant must be done at the earliest in emergencies and efforts must be made to procure report quickly and the consultant must be informed about the result of the investigation once you receive the reports, and any direction(s) given by the consultant must be carried out forthwith—BG Busappaiah v/s Holdsworth Memorial Hospital & Anr.

Do follow your patient, when admitted in an institution regularly, as you are the primary treating physician. The hospitals are only vicariously responsible for any mishap.

Do not assure patients for complete cure.

Assure of only proper and complete care.

Accept mistakes honestly, offer sincere apologies, and show repentance for any untoward incident.

These are the statements from a noted Judgment in 2008 and they also find place in our Code of Ethics 2002. Ethical practice with compassion and care will prevent any legal issue for a peaceful practice.