

MEDICAL NEGLIGENCE



WHERE LAW MEETS QUALITY - BY NAVODITA SINGH

INTRODUCTION

What is negligence?

“Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”

- *Alderson B.*

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DEFINITION

What is medical negligence?

Medical malpractice is a legal cause of action that occurs when A medical or health care professional, through a negligent act or omission, deviates from standards in their profession, thereby causing injury to a patient.



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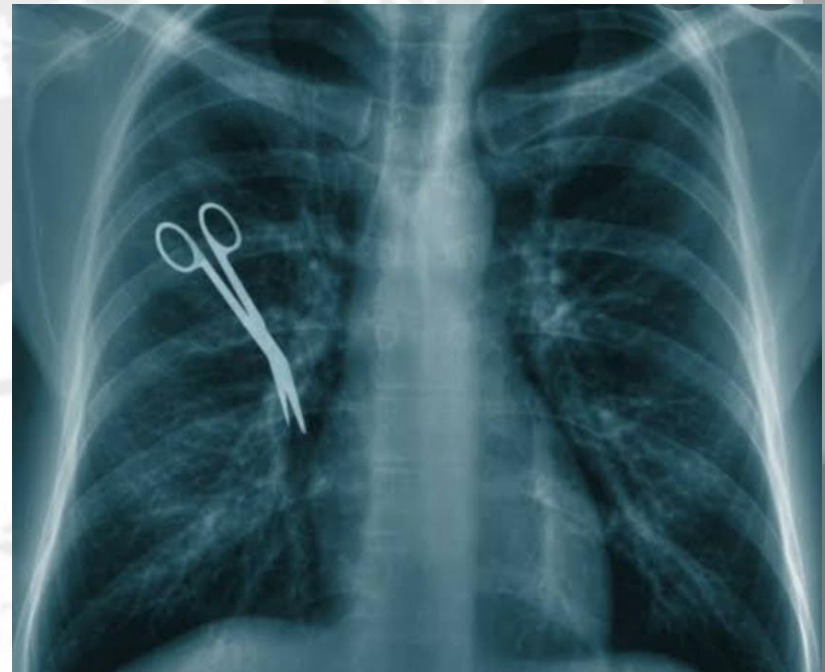
ESSENTIALS

1. Duty of care must be owed to the patient

- Sishir Rajan Saha v. The state of Tripura
- A duty of care in deciding whether to undertake the case
- A duty of care in deciding what treatment to give
- A duty of care in the administration of the treatment

2. Doctor acting in a negligent manner

- ⦿ Principle of *Res Ipsa loquitur*
- ⦿ Gian chand v. Vinod kumar Sharma
- ⦿ Jagdish Ram v. State of H.P.



LIABILITY

1. Civil liability

- Mr. M Ramesh Reddy v. State of Andhra Pradesh
- Krishna Iyer v. State of Tamilnadu and Others

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2. Criminal liability

- Section 304 A of IPC- death caused by rash or negligent act.
- Doctors can be charged with negligence for transmission of infections.
Eg- HIV, HBsAG.



CASE LAWS

Dr. Suresh Gupta's Case (Supreme Court of India, 2004)

- Whenever a patient died due to medical negligence, the doctor was liable in civil law for paying the compensation.
- Only when the negligence was so gross and his act was as reckless as to endanger the life of the patient, criminal law for offence under section 304A of Indian Penal Code, 1860 will apply.

Indian Medical Association vs. V. P. Shantha & others

- ⦿ This landmark case brought Medical negligence under Consumer Protection Act, 1986.
- ⦿ Medical care was said to be a “service”.
- ⦿ Doctors sued under medical negligence, would get compensated.

COVID-19 AND MEDICAL NEGLIGENCE

- ◎ Black fungus due to unclean ventilators.
- ◎ Unmatched plasma transfusion.
- ◎ Wrong vaccine given in U.P. village.



CONCLUSION

Medical profession is a noble profession which needs precision and caution.

To err is human, however, due diligence is required while attending to the patients.

It will be beneficial to have a legislation that deals, with medical negligence as well as other occupations requiring such requisite amount of skills, separately with stringent laws.





THANK YOU