

Litigation in Anesthesia Practice

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Introduction

Though safe anaesthesia practice has improved the quality of medical care, perioperative adverse patient outcomes are not uncommon. As the anaesthesiologist manipulates the human physiology, often in a diseased condition, the risk is quite high. When the patient outcome is not as expected, there is chance for medical litigation. The complications may be due to patient factors, human errors, or equipment malfunctioning. The anaesthesiologist should anticipate such situations and take precautions to ensure a safe patient outcome, thus reducing the chances for litigation. Litigations have led physicians to take due precautions and patient care leading to a safer medical practice.

The motive behind litigation may not be always financial gain. It can be a psychological reaction of the patient or their relatives to the treating doctor, who feels that due care was not

given. At times it may be due to a poor doctor-patient relationship.

Types of Cases

Anesthesiologist can be charged with either a civil or criminal case. Civil case is filed in the court or consumer forum seeking compensation for the harm caused to the patient. Criminal case is filed in a police station, and after investigation the doctor is prosecuted, if the offence is found to be of serious nature. He will be punished if found guilty, but the complainant does not get any compensation.

Medical Malpractice

It is the failure to provide professional care with the ordinary skill given by another member of the profession of similar quality, resulting in injury, damage or loss to the patient. Malpractice suit is often raised against those who has exhibited negligence and did not abide to the prescribed standards of care.

Standards of Care

It is how the physician should act as prescribed by the professional body, based on scientific principles and standard text books. This is usually looked by the court to assess whether reasonable care has been given or not. The practitioner should discharge reasonable standards of care and competence to his patient. Neither a very high nor a low degree of care and competence is expected by the court.

Standards of Care in Anesthesia Practice

This has to be assessed in view of the circumstances at the time of the incident. While evaluating, factors such as condition of the patient, experience of the surgeon, nature of the procedure, availability of drugs and equipments has to be considered.

The anaesthesiologist should do a preanaesthetic

assessment on the previous day for all elective cases. In addition to clinical examination, he should go through the relevant investigations and get necessary interdisciplinary consultations. He should explain the contemplated anesthetic procedure to the patient or their caretakers and get a written informed consent.

Informed Consent

It should contain a fair and clear explanation of the procedure and the risks and complications that might occur, specific to the patient. Though a common consent is taken for anesthesia and surgery, a consent specifically mentioning the risks and details of anaesthesia will be more valid in the Court.

Anaesthetic Procedure

Anaesthesiologist has the primary responsibility to choose the right anaesthetic technique for the planned procedure. Never select a technique against the wishes of the patient. He should confirm the patient, type and side of the surgery before anesthetizing. The surgeon is not expected to commit on the anaesthetic technique, but can ask for surgical requirements (e.g. abdominal relaxation, induced hypotension).

The anesthesiologist should be present throughout the conduct of anesthesia till the patient is stable in the postoperative room. He should respect the dignity of the patient and should not make adverse comments when anaesthetized. Providing adequate anesthesia, pain relief and prevent intraoperative awareness in a safe way are his primary concerns. He is responsible for the maintenance of vital parameters and should continuously monitor them aided by monitoring devices. He should ensure, patient safety during surgical positioning. Any change in the vital parameters or equipment

malfunctioning which endangers the patient has to be immediately recognised and properly dealt with. In case of any unexpected event (e.g. lip injury during intubation, high spinal following epidural), proper documentation should be done and the patient or the caretakers should be informed later.

Qualification and Experience

A practitioner is expected to practice only the particular system or branch of medicine he has studied and registered. Inexperience or lack of knowledge is no defense and is likely to be medical negligence. A patient has the right to get due care and competency from a qualified and experienced person. As medical practices are likely to change over time, the practitioner should be updated with the current standards of practice.

Vicarious Liability

If a senior anesthesiologist delegates duty to another person under his control, he will be responsible for the actions of the latter. Delegation of responsibility to an inexperienced, knowing that he will be unable to give reasonable care will amount to negligence. However, vicarious liability is not applicable to criminal liability of the junior. The hospital is liable for negligence of the employee and can be held responsible for faulty equipment or unqualified staff.

Error in Judgment

A doctor will not be negligent due to an error in judgment which has caused the damage, provided he has acted with reasonable standards of care. However, an error in judgment which is not expected from a person of similar competency which has caused the damage, can amount to negligence. Grave mistakes like using an unscientific technique or a wrong drug can lead to

liability or even lead to “res ipsa loquiter”.

Res Ipsa Loquiter

This means that “things speak for themselves”. Here, the damage would not have occurred without the wrong action of the doctor, such as failure to remove a pack or anesthetizing a wrong patient. Here, the burden of proof is on the defendant doctor and not the complainant.

Expert Witness

The court often assigns an expert to find whether adequate care was given to the patient. He will be an expert in the field and competent to assist the case by his skill and knowledge in a just and truthful way, but should not be a personal friend or relative of the complainant. Both the parties have the right to produce an expert to support their claims. Many a time, the success of the case depends on the opinion given by the expert witness. The court can dismiss the complaint if the complainant fails to produce an expert to substantiate the claim.

Medical Negligence

If the mishap has been proved to be due to lack of reasonable care or without a proper consent, the treating physician will be held responsible. In case of medical negligence, the patient (Plaintiff) must prove:

1. *Duty*: the anaesthesiologist owed him a duty or obligation.
2. *Breach of Duty*: the anaesthesiologist failed to fulfill his duty.
3. *Causation*: there is a close causal relationship between the anaesthesiologist’s act and the injury.
4. *Damages*: damage occurred due to the anaesthesiologist’s act.

Contributory Negligence

If a patient does not follow the doctor’s instructions, which has resulted in the injury, he cannot claim for damages. e.g. Aspiration pneumonitis following anesthesia in a patient, who has not obeyed to the instruction of preoperative fasting.

Malpractice Damages

General damages are related to the pain and sufferings directly related to the injury. Special damages are consequences of the injury like medical expenses and lost income. Punitive damages are exemplary damages to punish the physician for his negligence and as a caution for others not to repeat such mistakes.

If Litigation is Anticipated

Maintain confidentiality and do not discuss the case casually with others. Ensure that the records are proper and complete, with date and time, name and signature with qualifications and designation. Never alter or tamper the records, which will be viewed by the court seriously. Collect as much details, facts and records relating the case to defend the case. Any clarifications regarding the case should be sought for and kept ready for the trial. In the court, the defendant will not be allowed to give his opinion, which the court will seek from the expert witness. He will only be allowed to recollect what has happened, and asked to answer the questions put forth towards him.

How to Present in the Court?

Behave in a polite way, observing the local rules. Do not become restless or panic. Answer to the questions put forth legibly in a calm manner with a clear voice, avoiding medical jargons. Do not provide extra information when not asked

for. Never become emotional, arrogant or make jokes and sarcastic comments. Do not try to teach the opposite counsel or the judge or try to show ones' knowledge and expertise. Try to convince the court that due care and precautions are taken in patient care and do not exaggerate the care given.

How to Avoid Litigation?

Ensure a proper written informed consent before taking up the patient for anaesthesia. Improve doctor-patient relationship during the preanaesthetic visit and explain the procedure and the risks involved taking their confidence. A male anaesthesiologist should never anaesthetise a female in the absence of a female attendant. Keep updated the scientific developments and practice the currently accepted techniques, keeping to the "standards of care". Ensure that the patient is being continuously closely monitored and immediate care is taken in the event of any adverse occurrences. Always keep a good anesthetic record with documentation of all perioperative events with date and time, and corrections if any, duly signed. Never tamper the records. Court assumes that "if it is not written, it is not done". Involve multidisciplinary consultations and help of senior colleagues when needed. Ensure that the assistants and co-workers are properly qualified and trained. Keep the machines and equipments properly maintained with proper pre procedure check up. Take precautions to avoid wrong drugs and dosages, and discard the expired drugs. In case of anticipated difficulty in procedures like endotracheal intubation, regional techniques or invasive monitoring, get expert help or refer to a

better centre. In case of a mishap, never abandon the patient and make sure that the patient has been properly handed over to the right person and place, where due care can be given.

Finally, the anaesthesiologist should not take up a case if he himself is physically or mentally exhausted which can endanger the patient's life.

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N.B: The author has personal experience in facing litigation in which the court has appreciated the patient care given by the doctors.