

Giving opinions in medicolegal cases

Doctors reluctant to commit themselves

Doctors are often approached by patients, their relatives or legal advisers for an expert opinion on complaints of medical negligence or medical malpractice.

This situation has become more frequent of late since the consumer courts usually insist that the complainant brings a medical expert's opinion to support the case or else face dismissal of the complaint¹. This is ostensibly done to reduce the number of frivolous complaints² which would otherwise drown an already overburdened and under-equipped consumer court machinery. However, this puts the complainant in a difficult situation. Doctors are generally reluctant to give adverse comments against other doctors. The main reason for this reluctance is that the medical community is quite close-knit and inter-connected. Thus, especially amongst private practitioners, very few are willing to stick their necks out at the cost of antagonising any of their fellow professionals.

Doctors in public sector institutions, one would expect, would be more forthcoming in giving their opinions in such cases. But even amongst public sector doctors, there are very few who are willing to come into the open. While most are not averse to going through the available facts of the case and expressing their opinions orally, very few are willing to identify themselves and certify on paper³. This is due to several factors. The rules governing public service doctors state that they have to take the permission of their employers before making any affidavit. The employers may be willing to grant permission if such an opinion is requested by the court. The court, however, insists on a medical expert's opinion before even admitting the case in court! Thus the complainant is caught in a Catch-22 situation. No private practitioner is willing to give an opinion in writing, and the public sector doctor wants the court's request before he gives an opinion!³

We have discussed this problem with several legal minds and learn that a public sector doctor does not need to take permission from his employer for giving an opinion or even making an affidavit as long as the case does not pertain to public sector hospitals and as long as he provides his services free of charge.

There are other factors too which restrain public sector doctors from giving written opinions. They, themselves, may be contemplating starting private practice and would not like to lose any goodwill within the profession. Their

spouses or close relatives may be in private practice. They may be directly or indirectly acquainted with the doctor against whom the complaint is made. Moreover, now that public hospitals are also covered under the Consumer Protection Act, they are exposed to medico-legal trouble themselves, especially when you take the inadequate infrastructure available to them for catering to their huge patient load.

What is the wronged patient to do?

In this mess, what is the aggrieved patient or his relatives do? As such cases — where the complainant comes up against a blank wall in seeking medical opinions — keep increasing, so will the frustration and disgust of the public. They may lose faith in the ability of the legal system to provide justice in medico-legal cases.

One alternative is for the consumer court to appoint a panel of doctors from the various specialities. The case records could be sent to the relevant panelist for an unbiased opinion. Another alternative is for voluntary organisations to set up such panels. The case reports can be sent to the relevant panelist but the medical opinion is given under the imprimatur of the organisation. The advantage of this system is the elimination of the sense of isolation for the doctor who is giving the opinion. Yet another option for the court to conceal the identity of the medical expert who gives the written opinion. This will surely make it easier for doctors willing to give their opinions without being pressurised.

For the present...

Under the current situation, as a doctor who does not wish to put on blinkers and run away from the situation, what is my role? The patient or his relative have come to me with the hope that I will give them my honest opinion. I feel, after going through the case records, that there is reason for the complainant to feel aggrieved. It is easy for me to make an excuse and shy away from any further involvement. What should I do?

Yash Lokhandwala

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