

Litigation in Medical Practice

Medical litigation occurs when a patient claims harm due to healthcare provider's negligence to meet the accepted standard of care. These cases often involve allegations of misdiagnosis, surgical errors, medication mistakes, child birth injuries etc. Every patient and their family should be considered as a potential litigant, especially when the health care has been declared as a service industry, which is the foundation of breaking the bond, respect and trust between the doctor and patient.

In Nepal Medical sector is growing rapidly and the incidence of Medical malpractice are also common. The legal framework in Nepal governing Medical malpractice is based on Nepal Medical Council Act, 1964 (amended in 2020), the National penal code 2074 (2017) and the consumer protection act 2075 (2018). The legal framework of Medical malpractice in Nepal has evolved significantly over the years. The Nepal Medical Council plays a critical role in regulating Medical practice and addressing the issue of professional misconduct. The National penal code recognizes gross negligence as a criminal offense and provides for punishment of fine and imprisonment based on the gravity of offense. Consumer protection act, of Nepal recognizes patients as consumers and health care service as a type of service. If the Medical services are deemed deficient, the victims are given the right to seek the remedy before the court.

In our Country certain elements of Medical malpractice must be proven to establish Medical negligence.

- Duty of care: Healthcare providers must have owed a duty of care to the patients.
- Breach of duty: Evidence that the healthcare provider failed to meet standard of care.
- Causation: Breach of duty must be directly linked to the harm suffered by patient.
- Damage: Patient must have suffered quantifiable harm as a result of negligence.

Of late consumer court has given its verdict on some of the cases of Medical negligence in Nepal, which has been praised as a victory for patient's right by majority. But on the other side this decision has created an ambiguity and fear among the Medical fraternity. This as a result will push the healthcare providers towards the defensive Medical practice which includes ordering a lot of tests, avoiding risky treatments. These things will increase the treatment cost, workload of healthcare providers and will harm the patients the consumer court is trying to protect.

To overcome the problem both healthcare providers and law makers should be careful and keep the balance. There should be no injustice to the healthcare providers, healthcare providing institutions and patients. Healthcare provider should be highly responsible, accountable and dutiful to mitigate the avoidable medical errors. Medical students should be taught about the Medical ethics, Medical negligence and its consequences at the graduation level itself. Similarly, Institutional improvements such as compulsory monitoring protocols, standardizing Medical records and malpractice insurance should be established. Furthermore initiatives should be taken to educate the people about the realistic outcomes and complexity of the healthcare procedures.

Prof. Dr. Anup Sharma

MS (General Surgery), Fellowship (GI Onco-Surgery)

Editor- In-Chief