

MEDICO-LEGAL ISSUES IN ORTHOPAEDIC PRACTICE: PRACTICE PERSPECTIVEV. J. Purushotham¹**HOW TO CITE THIS ARTICLE:**

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ABSTRACT: With the tremendous metamorphosis in the healthcare sector, incidents of lawsuits against orthopedic surgeons and hospitals, in the name of medical negligence is on the rise. With every consumer redress forums being more inclined in protecting the consumers, it is imperative for practicing Doctors to be more informed on the Medico-legal aspects in their field of practice. This article is about the prevalence of Medico-legal issues in orthopaedic practice& how one should overcome it in their practice.

KEYWORDS: Medico-legal, Malpractice, Consumer forum.

INTRODUCTION: The medical fraternity in India experienced the first assault by the honorable Supreme Court order in 1995, where medical services were included under the Consumer Protection Act. Since then, there has been a slow but steady rise in the number of such cases. In the last decade, the number has grown rather exponentially.

Thankfully, we had some respite from the following two judgments of the Supreme Court:

- The one from 2005 that says, the criminal negligence case cannot be slapped on doctors unless in extreme cases of negligence.
- The more recent judgment from 2009 recommends that all cases pertaining to medical negligence should be referred to a medical board/specialist for expert opinion.

Despite the relief from the Supreme Court, most orthopedic practitioners who have been affected by the medico-legal issues directly or indirectly, dread them. However, there is still a significant faction of orthopedic surgeons in this country who are still unaware of the legal implications of their practice.

Note: The term medico-legal cases used in this article are used with respect to cases pertaining to the Consumer Protection Act. These cases are often referred to as Malpractice Lawsuits or Legal Injuries in the western countries.

As if it were not enough, complications are more likely in the management of orthopedic cases. While globally, orthopedics lists among the top 5 fields which are most often sued, in India, it is currently occupying the No. 2 slot in terms of the number of medico-legal cases pending at all levels of Consumer Forums. Unfortunately, in terms of numbers and compensation amount too, orthopedics ranks high.

The most probable reasons for orthopedics to be on the top of the list in terms of medico-legal cases are:

- **Doctor-Patient rapport not built before the treatment:** Most orthopedic cases that lead to medico-legal cases result from trauma. Besides, these cases are seen in the Emergency Room,

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thereby resulting in critical and uncertain decisions. Unlike in other fields where the patient has an existing relationship before any complications occur, the rapport-building has to begin much after the treatment has begun.

A survey done by AAOS (American Association of Orthopedic Surgeons) also revealed that patients feel that orthopedic surgeons are not friendly and are not sympathetic.

- **Morbid results are visible:** Unlike other medical divisions, the complications are more visible in the form of deformities. Surgery results usually lead to prolonged morbidity than mortality. Though in the court of law, it is imperative for the opponent to prove the doctor's negligence, the presiding officer of the forum usually relies upon what is visible to the eye. Besides, the opponent will have a 'standing witness' in the form of a patient who walks to the forum with walking aids, wheelchairs, and in some cases, obvious deformity and discharging sinuses. Added to these are our 'transparent media' in the form of X-rays, which speak to the underlying conditions. In most of the cases, a complication of the injury/disease is viewed as the negligence on the part of the doctor or the hospital.

What is expected of us?: To help both affected parties and orthopedic surgeons to be measured against a fair yardstick, all that is needed to examine is whether the doctor:

- Is adequately qualified.
- Has executed reasonable skill, care, and knowledge in the case.
- Has properly documented all the events including the consent of the patient.
- Has communicated properly with the patient, or with their attendants.

Note: When questioned, it is not a mandate for orthopedic surgeons to be exceptionally skilled or highly competent.

Causes for lawsuits against orthopedic surgeons: Some of the major reasons behind why orthopedic surgeons are subjected to lawsuits are:

- Poor results obtained from treatments.
- Improper treatment.
- Improper communication/documentation.
- Infection.
- Diagnostic errors.
- Wrong side/level surgeries.
- Nerve/vessel injuries and Compartment Syndromes.

Poor result in the form of non-unions, mal-unions, limb length discrepancies, loss of movement and residual deformities are some of the most common cases that are drawn into a legal battle. Unfortunately, regardless of the complexity of the injury, the expectations from the patients as per the outcome of the treatment are also high.

In a recent global survey conducted by AAOS, it has been highlighted that communication has been the major let-down from the orthopedic community, whereas improper treatment stands

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second. Though infection was considered to be beyond surgeons' control earlier, more and more fingers are being pointed towards the operating conditions/set-up.

Disrespect to anatomy may result in nerve/vessel injuries. Compromising with investigations for want of cost cutting may also yield a wrong diagnosis.

Common injuries in legal Forums: The top ten conditions that lead to frequent medico-legal cases in orthopedics are:

1. Fractures of femur.
2. Fractures of tibia.
3. Disc lesions.
4. Osteoarthritis (Arthroplasty).
5. Fractures of radius and ulna.
6. Ankle injuries.
7. Knee ligament/menisci injuries.
8. Back disorders, lumbago sciatica.
9. Humerus fractures.
10. Hand injuries.

The complex nature of the injuries of femur and diversity in management could be the reasons why femur fractures top the list. With the increase in the number of joint replacement surgeries in recent times there is a gradual increase in terms of medico-legal cases in Arthroplasty too. Injuries and conditions related to spine also accounts for good numbers of such cases. Fractures of the forearm, humerus, and in the more recent times, shaft femur are common red areas in the pediatric group.

How to prevent or reduce medico-legal cases in Orthopedics: Here are some ways orthopedic surgeons can take precautions and prevent their cases from ending up in legal battles:

- **Ensure clear and complete communication and Documentation:** As with any other fields, good communication and establishing a friendly relationship with the patient is of paramount importance. The patient should be explained thoroughly about the nature of the injury, treatment options, and possible complications that are serious and frequent. Every step taken from the time of examination till the patient is last seen has to be documented properly. The consent of the patient should be taken prior to each procedure/surgeries individually. All the documentation should be objective avoiding subjective documentation. Most importantly, be sure to make all your documentation legible.
- **Do not hesitate to order for any required investigations, however repeated, it may be:** The essentiality is to avoid wrong diagnosis.
- **Always adopt a standard, universally accepted protocol during the management of the Condition:** While referring to procedures in a standard textbook, due attention should be given to evidence-based orthopedics. Update your knowledge periodically as and when required.
- **Do not compromise on the OT setup:** Never compromise on the standards of the OT because more and more evidences are available about avoiding infection in a standard set-up.

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- **Mark the side to be operated on:** To avoid performing surgeries on the wrong side, educate the supporting staff about the method to identify the correct surgery side and location. Additionally, just before the surgery, double-check whether the correct side has been marked.
- **Be sympathetic when things go Wrong:** If complications occur during the course of treatment be sympathetic with the patient. Explain the complication and the corrective plan required to handle the complication. When in doubt, consult your seniors or colleagues about the management of complication. Do not hesitate to refer the case to the concerned expert when required.
- **Never get into any settlements without legal Assistance:** Paying some amount of money is as good as accepting your negligence, whatever be your intention. Always respond to the legal notice served by the patient, because a non-response amounts to negligence.

CONCLUSION: In orthopedics, if medico-legal cases are considered as a disease, poor results are its chief symptom. Today's patients insist that medical products and services should be provided without risk. There is an increasing attitude of the courts that medicine has become an exact science and failures are not acceptable. To avoid malpractice lawsuits careful clinical appraisal, good clinical judgment, impeccable surgical technique, good surgeon-patient relationship, and well documented records are essential.

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