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The Medico-Legal case - Should we be afraid of it?

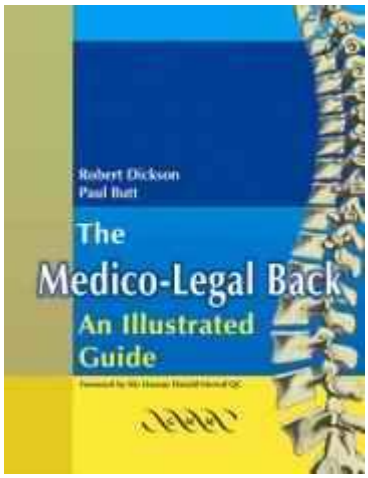
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Abstract

Apart from his routine and usual "clinical" cases, a doctor will come across certain 'Medico-legal' problems at one time or the other during the practice of his profession. The general myth that only the doctors working in the government hospitals would be involved with such cases has now been dispelled by the recent decisions of the Hon'ble courts, particularly the Supreme Court. A good working knowledge of the law in this regard, coupled with a thorough understanding of the correct method of dealing with such cases is the need of the hour. This article discusses some of the common practical issues involved in these cases.

Introduction

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Every medical practitioner, at any time during the practice of his profession, whether in a government setting or a private one, will encounter/ would have encountered certain cases, which at that given time or subsequently, would be labeled as "medico-legal". Many a practitioners are usually apprehensive in dealing with these, for, according to them, an MLC (Medico-legal Case) implies-'rough speaking' police officials, 'inordinate hours' in the court, 'unrelenting' defense counsels, etc. Because of this "fear-factor", they either try to avoid the cases or try to 'get done with' them as soon as possible. Both ways, because they did not properly understand the implications of the case, they may make mistakes, which may land them in trouble. The best way to deal with these cases is to understand them clearly, analyze them thoroughly, and then act accordingly.

What actually is a medico-legal case?

A medico-legal case is a case of injury/ illness where the attending doctor, after eliciting history and examining the patient, thinks that some investigation by law enforcement agencies is essential to establish and fix responsibility for the case in accordance with the law of the land.[1] It can also be defined as a case of injury or ailment, etc., in which investigations by the law-enforcing agencies are essential to fix the responsibility regarding the causation of the said injury or ailment.[2] Simply put, it is a medical case with legal implications or a legal case requiring medical expertise. Accordingly, a medico-legal report is one, which is prepared for the purpose of litigation - imminent or prospective. ***The responsibility to label any case as an MLC rests solely with the attending medical practitioner.***

Receiving an MLC

A doctor can receive a medico-legal case in any of the three ways -

1. A case is brought by the police for examination and reporting,

2. The person in question was already attended to by a doctor and a medico-legal case was registered in the previous hospital, and the person is now referred for expert management/ advice.

3. In the other instances, after history taking and thorough examination, if the doctor feels that the circumstances/ findings of the case are such that registration of the case as an MLC is warranted, he should immediately inform the patient of the same and take his consent for converting the case into MLC. At that given time, the patient may refuse consent, withdraw the consent already given or may even leave the hospital. The doctor has no right to force anything on the patient. The best that should, in his own interest, be done is to carefully document all the findings, note the exact

moment at which the consent was withdrawn and inform the nearest police station regarding the same, giving reasons for his actions. At times, the decision may be made easier by the patient himself expressing his intention to register a case against the alleged accused.

The decision is easy in the first two instances but the doctor has to use his judgment when the person comes on his own and the history is not completely revealed, either by the patient or his relatives/ friends, due to some motive. When a person has been referred from another hospital, which has already registered a medico-legal case, the same may be informed to the nearest police station; however, a fresh medico-legal case need not be registered. When a patient is to be referred to another hospital for further management, he should be issued a referral letter detailing the treatment given and whether the case was registered as an MLC or not.

Request by the patient or the persons accompanying, not to register a medico-legal case, should not be acceded to, by the medical practitioner. He should use his judgment and experience. If he thinks that the case needs to be reported to the police, he should do so without fail and without any delay. Not informing the police of such cases may invite trouble to the doctor u/s 39 CrPC [Criminal Procedure Code (cases wherein public is duty-bound to inform the police)] and S.177 & 201, IPC [Indian Penal Code (giving false information & causing disappearance of evidence)].

Procedure of registering a medico-legal case

In the casualty, while attending to an emergency, the doctor should understand that his first priority is to save the life of the patient. He should do everything possible to resuscitate the patient and ensure that he is out of danger. ***All legal formalities stand suspended till this is achieved***. This has been clearly exemplified by the Hon'ble Supreme Court of India in *Parmananda Katara Vs Union of India*[3]: "Every doctor is bound to provide medical aid to the victims irrespective of the cause of injury; he cannot take any excuse of allowing law to take its course". In the same case, the MCI (Medical Council of India) filed an affidavit stating that "the MCI expects that all registered medical practitioners must attend to the sick and the injured immediately and it is the duty of the medical practitioner to make immediate and timely medical care available to every injured person, whether he is injured in an accident or otherwise...Life of a person is far more important than the legal formalities" Again, in *Pattipati Venkaiah Vs State of AP*[4], the Hon'ble High Court of Andhra Pradesh decreed that "doctor's duty is to attend to the injuries of the person produced before him. His primary effort should be to save the life of the patient and then inform the police/ document clearly all the injuries observed by him in medicolegal cases". This means that the duty of the doctor to provide medical aid, even in MLCs, has been extended to the private doctors also.

The next important duty is to identify, after carefully analyzing the injuries on the person of the patient, the history given, and the other circumstances of the case; whether the said case falls under the category of an MLC or not. If it does fall in this category, then he must register the case as an MLC and/ or intimate the same to the nearest police station, either by telephone or in writing. An acknowledgement of receipt of such a message should be taken for future reference. If the intimation is given orally or on phone, the diary number (DD or the Daily Docket number) should be taken down as proof of intimation and should be properly documented in the patient's records. According to the Hon'ble Supreme Court, "whenever any medico-legal case comes to the hospital, the medical officer on duty should inform the Duty Constable, giving the name, age, sex of the patient and the place of occurrence of the incident and should start the treatment of the patient. It will be the duty of the said Constable to inform the nearest concerned police station or higher

police functionaries for further action".[3] Every big hospital usually has either a police post at the casualty or has a police official posted there for this purpose. Police should also be informed regarding the discharge/ death of the said patient in the Casualty/ any other department of the hospital.

A medico-legal register should be maintained in the casualty of every hospital and details of all medico-legal cases should be entered in this register, including the time and date of examination and the name of the doctor who is dealing with the case. This would be of immense help for future reference, when the patient through the court/ the police, requests for a copy of the medicolegal report.

Cases that are to be treated as medico-legal[5]

The following cases should be considered as medico-legal and as such the medical officer is "duty-bound" to intimate to the police regarding such cases:

1. All cases of injuries and burns -the circumstances of which suggest commission of an offence by somebody. (irrespective of suspicion of foul play)

2. All vehicular, factory or other unnatural accident cases specially when there is a likelihood of patient's death or grievous hurt.

3. Cases of suspected or evident sexual assault.

4. Cases of suspected or evident criminal abortion.

5. Cases of unconsciousness where its cause is not natural or not clear.

6. All cases of suspected or evident poisoning or intoxication.

7. Cases referred from court or otherwise for age estimation.

8. Cases brought dead with improper history creating suspicion of an offence.

9. Cases of suspected self-infliction of injuries or attempted suicide.

10. Any other case not falling under the above categories but has legal implications.

Time limit for registering a medico-legal case

A medico-legal case should be registered as soon as a doctor suspects foul play or feels it necessary to inform the police, at any time after admission. There should not be any unnecessary delay in doing so. A case may be registered as an MLC even if it is brought several days after the incident.

Precautions to be taken

a. Consent

A valid consent to medical procedures is fundamental to the interaction between all doctors and patients. Accordingly, consent of the patient or the legal guardian is mandatory for examination. To be valid, the consent must be competent, freely given, informed, and specific to the procedure being performed. In medicolegal cases, an informed consent includes information that: a) the examination to be conducted would be a medicolegal one and would culminate in the preparation of a medico-legal injury report, b) all relevant investigations needed for the said purpose would be

done, and c) (the most important) the findings of the report may go against the patient if they do not tally with the history given.

A person arrested as accused in a criminal offence may however, be medically examined without his consent on the request of a police officer or on the orders of the court, if there are sufficient grounds to believe that such examination will provide evidence of the commission of the offence. Moreover, a reasonable amount of force may be used to medically examine the person in such cases (Sec 53 CrPC). To invoke Sec 53 of CrPC,[6] certain criteria need to be fulfilled, namely: a) the person should have been arrested on charge of committing an offence punishable under law, b) there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, and c) the requisition for medicolegal examination is from an officer of the rank of a sub-inspector of police or above.

Whenever examining a woman, it is preferable that a lady doctor should examine her, or, wherever this is not possible, a female disinterested attendant (nurse, etc) should be present during the examination.[7] The Hon'ble High Court of Punjab and Haryana has now ruled that only a lady doctor can examine a woman who is an alleged victim of sexual offence.

In civil cases, however, no examination should be done without the consent of the person to be medically examined.

b. Confidentiality

A doctor is required to keep secret all information regarding the patient that he comes across during the course of his treatment. Medico-legal reports are no exception and are to be treated as strictly confidential. They should not be issued directly to the patient. They have to be handed over to the police official, after getting them duly received on the carbon copy of the same. Copies of the MLR can be handed over to the patient/ his relatives, as per the prevailing rules of the doctor's hospital, and after the requisite fee has been paid by the patient.

c. Collection and preservation of samples

All relevant specimens should be collected and after proper labeling, are to be sealed under the doctor's supervision. These should be handed over to the police official concerned, along with the medico-legal report and a proper requisition letter detailing the tests to be conducted on such samples. If the samples have been collected on the request of the police, the fact is to be mentioned in the report and no requisition is necessary.

Medico-legal Reports

Medico-legal reports (MLR) are to be prepared immediately after the examination is done. They should be prepared in duplicate, preferably with a ball-point-pen, in a clear and legible hand. Cutting/ overwriting, etc should be avoided as much as possible and all corrections should be properly initialed. Abbreviations of any sort should be avoided.

An MLR comprises of three parts, namely:

a) Pre-amble-includes the date, time and place of examination, name of the patient, his residential address, occupation; name of the person(s)/police official accompanying, DDR/FIR No., informed consent of the person being examined, two marks of identification, etc, wherever applicable.

b) Body (Findings/Observations)-includes a complete description of the injuries/any other findings present; any investigations/referrals, etc, asked for.

c) Post-amble (Opinion)-includes the

- Nature of the injury-whether simple or grievous.
- Weapon/Force used-whether blunt or sharp or fire-arms or burns, etc.
- Duration of the injuries-based on the characteristics of the external injuries.

Here, it would be pertinent to add that when giving the duration of the injuries, the most common mistake that is committed is that undue/complete reliance is placed on the history given; while the doctor's own observations regarding the features of the injuries are often not taken into consideration. This again, may prove disastrous, as far as the courts are concerned. As regards the accuracy of estimating the duration of the injuries, the Hon'ble Supreme Court, in *Ramswaroop v State of UP*[8], said that "It is well known that a doctor can never be absolutely certain on the point of the time so far as duration of injuries is concerned".

- Any other information that may prove to be helpful to the police.
- If for any reason, the opinion is to be kept 'pending', the same is to be documented properly in the appropriate column.

The Officer/CMO issuing the MLR register to any doctor should ensure that it is properly numbered and a certificate regarding the same (giving the number of forms contained there-in) should be given by him on the first page of the said register.

All investigation forms, X-rays, Case file, etc should bear the label "MLC" on the top, so that necessary precautions can be taken by all concerned.

Custody of the Records

The records should be kept under lock and key, in the custody of the doctor concerned or may be kept in a Central Record Room, in hospitals where such facility is available; as per the institution's rules.

Most hospitals have a policy of maintaining all medico-legal records for variable periods. However, as per law, there is no specified time limit after which the MLRs can be destroyed. Hence, they have to be preserved. In view of the multitude of cases against the doctors under the Consumer Protection Act, it is advisable to preserve all the in-patient records for a period of at least 5 years and OPD records for 3 years.[9]

Admission and discharge

Whenever a medico-legal case is admitted or discharged, the same should be intimated to the nearest police station at the earliest. It is always better to inform the police through the casualty of the hospital where the medico-legal register is usually maintained and necessary entries can be made in it. While discharging or referring the patient, care should be taken to see that he receives the Discharge Card/Referral Letter, complete with the summary of admission, the treatment given in the hospital and the instructions to the patient to be followed after discharge. Failure to do so renders the doctor liable for "negligence" and "deficiency of service". In *N. K. Kohli v Bajaj Nursing Home*,[10] the Madhya Pradesh State Consumer Disputes Redressal Commission said that "issuance of

the discharge certificate is the mandatory duty of the treating doctor and the Nursing Home/ Hospital and the non-issuance of the same amounts to grave negligence and deficiency (in service) on the part of the doctor and the hospital".

If the patient is not serious and can take care of himself, he may be discharged on his own request, after taking in writing from him that he has been explained the possible outcome of such a discharge and that he is going on his own against medical advice. Police have to be informed before the said patient leaves the hospital. Sometimes the patient, registered as a medico-legal case, may abscond from the hospital. Police have to be immediately informed, the moment such an instance comes to the notice of the doctor/ hospital staff.

Death of a person admitted as a medico-legal case

The following are the do's and dont's in case a person admitted as a medico-legal case expires.

- Inform the police immediately.
- Send the body to the hospital mortuary for preservation, till the legal formalities are completed and the police releases the body to the lawful heirs.
- Request a medico-legal postmortem examination.
- Do not issue a death certificate - even if the patient was admitted.

The dead body should never be released to the relatives; it should only be handed over to the police.

The situation in other countries

In the neighbouring Pakistan, the Islamic Law is integral and fundamental to its constitution. In cases of sexual offences, by the promulgation of the Hudood Ordinance, scientific evidence and examination has been replaced by the evidence of at least 4 "Muslim male eye witnesses" to the "act of penetration" as proof of the Act in the offences of "Zina" and "Zina-bit-jabr" (sexual intercourse with consent and sexual intercourse without consent, respectively; out of wedlock). In many cases, the police do not even approach the medico-legal department of the hospitals for this purpose.[11]

The general routine of medico-legal examination in the UK is similar to that followed in India. Broadly speaking, following steps are usually involved: a) a complete general history, b) specific history related to the particular incident warranting a medico-legal examination, c) complete general physical examination, followed by a d) special local examination, e) careful and complete documentation, f) investigations, if any to be undertaken before giving g) the opinion. A detailed report should be prepared in all cases where in certain investigations were undertaken, incorporating the results of all such investigations/ laboratory tests.[12]

In many states of the US and the UK, the concept of "Forensic Nurse Examiner" is being generally accepted. Registered nurses, specifically trained to provide comprehensive care in the medico-legal management of forensic patients, including forensic evidence collection and testifying as an expert in a court of law are emerging as able assistants to the medical officers.[13]

In the US, one of the most important enactments of Federal Legislation pertaining to the emergency medicine and care was included in the Consolidated Omnibus Reconciliation Act (COBRA).[14] One of its sections, the Emergency Medical Treatment and Active Labor Act (EMTALA) deals comprehensively with the emergency medical care. According to this Act, all hospitals have to

provide care for all patients requiring emergency medical care (EMC) within 250 yards of the hospital, irrespective of their ability to pay for the treatment and even if proper consent cannot be obtained.[15]

One major liability of the ED (Emergency Department) physicians under the EMTALA is that they are deemed to be responsible for the patients even if the patients are not physically available for them to examine or treat. A particularly illuminating case in this regard is the Ravenswood hospital case: On May 16, 1998, a 15-year-old boy was shot and wounded. His friends carried him to within 50 feet of Chicago's Ravenswood Hospital, put him down, and left. The hospital staff, even though they had seen the adolescent, did not go out to help him because hospital policy did not allow staff to leave the hospital premises to render emergency care. A police officer eventually used a wheelchair to bring the patient into the ED, where he died. The suit is reported to have been settled in April 2003 for more than $7 million.[16]

In most states the legal age for consent for medical treatment is 18 years, the parent/ guardian being the consenting authority in such cases. However, if such a minor patient is either married or pregnant, he/ she attains majority status for the purposes of consenting for treatment such a minor can also consent for the treatment of his/ her child.[14]

Conclusion

Medico-legal cases have to be dealt with properly, following the institution's prevailing guidelines. Usually, all the big hospitals and the teaching institutions have an 'institutional medico-legal manual' which gives, in a step-wise detail, the correct procedure of dealing with the various kinds of MLCs. Even if such manuals are not available, these cases pose no problem if one uses proper caution and due care and attention, while dealing with them. Proper documentation, timely information, a methodical and thorough examination-including all relevant investigations and referrals, etc, are all that are necessary to see such cases through, successfully.

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