

## DO'S AND DON'TS - By DR. LALIT KAPOOR

### CASE OF PATIENT WHO WAS PENALISED BY CONSUMER COURT AND ORDERED TO COMPENSATE DOCTOR

There is much to learn from patient consulted a cardiologist in another past medico-legal cases hospital for chest pain. This time the ECG which have finally revealed ischaemia for which he was treated concluded. It is useful to appropriately. However, the cardiologist store the lessons emanating allegedly remarked that he was 'shocked at the from such cases in one's treatment given at the previous hospital' and, subconscious memory. in his opinion the patient had, in fact, suffered I would like to outline a myocardial infarct at the time of the previous one such case so as to draw admission to hospital and he had been out some misdiagnosed as cholecystitis. Shortly A middle-aged marine engineer filed a thereafter, the patient underwent CABG complaint before the National Consumer surgery uneventfully.

Redressal Commission against a Bombay Subsequently, the patient filed a Gastroenterologist and the hospital to which complaint before the National Commission he was attached, claiming a compensation of claiming Rs.55.90 lakhs as damages for gross Rs. fifty five lakhs and ninety thousand only negligence of the Gastro-enterologist since he (Rs.55,90,000). A brief narrative of the case is had misdiagnosed his condition, thereby as follows:

leading to severe damage to his heart and thus

The patient was admitted to the hospital necessitating the heart operation.

for acute pain in the epigastrium. On the basis The case was extensively argued on both of history and clinical examination a diagnosis sides. Written replies and affidavits of experts of ? acute cholecystitis? pancreatitis was and text book and journal references were made. Treatment was started accordingly and filed before the court on behalf of the doctor as relevant investigations were ordered. WBC well as the patient. The cardiologist, who had count of 20,400 and presence of fever treated the patient, filed an affidavit in favour supported the diagnosis. Some abnormality in of the patient.

ECG was attributable to previous IHD It was strongly argued on behalf of the 14 years ago. Liver enzyme level were patient that the raised CPK enzyme levels abnormal though UCG did not reveal any should not have been ignored by the doctor. obvious abnormality. CPK enzyme was found This was countered by references in literature to be raised. Stating that twenty-fold elevations in CPK

The patient respon,ded to standard line of levels can occur after intra-muscular treatment and was discharged aner 8 days, injections of various drugs, and this seemed to being asymptomatic now. have been the case, in view of the number of After about two and a ijalf months, 1M injections received by the patient at the previous hospital where he had been admitted.

After hearing both sides, Justice V. Balkrishna Eradi dismissed the complaint of the patient. He further directed the patient to pay Rs.10,000/- to the defendant doctor and Rs.10,000/- to the hospital. Under the CPA there is a provision for a maximum penalty of Rs.1 0,000/- which can be awarded against a patient for a vexatious complaint.

The remarks of Hon'ble Justice Eradi in his judgement are worth reproducing:

the motive of the complainant is only to indulge in speculative litigation taking undue

advantage of the fact that no court fee is payable for institution of a case under CPA.

Mr. Y. Krishnan, member of the Forum made the following remarks:

". . . the complainant has filed a false and vexatious complaint with a view to harass, intimidate and blackmail the doctor. Considering the magnitude of the compensation claimed, this must have caused tremendous tension to the doctors concerned, disturbing their state of mind, shaken their confidence in their professional knowledge and skill and also disturbed them in their practice for which I feel they should be adequately compensated.

. . . I have no doubt whatsoever that the award of costs of Rs.10,000/- would be pitifully small and would not act as deterrent against frivolous and vexatious complaints and harassment. The consumer forums should have powers to adequately compensate the parties in such cases. I consider it my duty to make the above observations so that law makers may take notice of the same and take appropriate steps to ensure that the CPA is not misused.

Undoubtedly, these heartening words need to be widely publicised in places where it would matter.

I would like to draw a few observations from the above case:

1. We must drastically curb this tendency to criticise and run down colleagues without knowing the complete facts and circumstances of the case. It is only fair to personally speak to the earlier doctor to get the facts right. This is a courtesy/which you would expect as well, should your role be reversed. A few off-the-cuff remarks are enough to provoke and instigate the patient.

Do not pass comments on treatment given by your colleague without knowing full facts of the case. Patients' version of the same is notoriously misleading and sometimes biased.

It may be noted that in the present case, the judge admonished the cardiologist who wrongly supported the patient and dismissed his affidavit as motivated.

2. Any allegations against you should be given due importance and replied with seriousness and competence.' As in the present case, appropriate references etc. from medical literature should be intelligently garnered and presented in a simple manner to the judge who is a layman as far as medicine is concerned. Your case should not be lost by default or due to sloppy defence.

3. Accurate and complete medical records of a patient can go a long way in successfully resisting allegations against you.

*Dr. Lalit Kapoor heads the Medico-Legal Project of the AMC. The "project" guides the members who face medico-legal problems.*