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**Dr. M Vinod Kumar**  
Post Graduate Student,  
Department of Public Health,  
Dentistry The Oxford Dental  
College, Bommanahalli,  
Bangalore, Karnataka, India

**Dr. Shilpashree KB**  
Reader, Department of Public  
Health, Dentistry The Oxford  
Dental College, Bommanahalli,  
Bangalore, Karnataka, India

**Dr. Archana Krishna Murthy**  
Professor and Head of the  
Department, Department of  
Public Health, Dentistry The  
Oxford Dental College,  
Bommanahalli, Bangalore,  
Karnataka, India

**Dr. Madhusudhan S**  
Reader, Department of Public  
Health, Dentistry The Oxford  
Dental College, Bommanahalli,  
Bangalore, Karnataka, India

**Dr. Shwetha R**  
Reader, Department of Public  
Health, Dentistry The Oxford  
Dental College, Bommanahalli,  
Bangalore, Karnataka, India

**Dr. David Coutinho**  
Post Graduate Student,  
Department of Public Health,  
Dentistry The Oxford Dental  
College, Bommanahalli,  
Bangalore, Karnataka, India

**Corresponding Author:**  
**Dr. M Vinod kumar**  
Post Graduate Student,  
Department of Public Health,  
Dentistry The Oxford Dental  
College, Bommanahalli,  
Bangalore, Karnataka, India

### Dental negligence in clinical practice

**Dr. M Vinod Kumar, Dr. Shilpashree KB, Dr. Archana Krishna Murthy,  
Dr. Madhusudhan S, Dr. Shwetha R and Dr. David Coutinho**

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#### Abstract

'Negligence' is derived from the Latin word 'Neglego' or 'Neglect.' Professional negligence arising from medical/ dental negligence is an absence of a reasonable degree of care and skill or negligence of a dental practitioner in the treatment of a patient, which causes injury or death.<sup>3</sup> In dental clinics there may be negligence in making a wrong diagnosis, failure to obtain informed consent, failure to order X-ray in cases where the history suggest impacted tooth, a broken file in tooth, performing more task than the patient consent for unprofessional procedure, mercury poisoning while doing dental filling is also considered as negligence.<sup>2</sup> Related articles were searched in PUBMED and Google scholar database and a total of 12 articles were reviewed from 2002 to 2018. Human values and ethical principle guide our profession and prevent the practitioner from any act of dental negligence.

**Keywords:** Dental negligence, consumer protection Act, ethics, mal-practice

#### Introduction

Dawn of civilization has witnessed that by trial or error, medical profession which is a public oriented and noble can survive only by observance and practice of certain rules of conduct guided by ethical, moral, legal and social values of land. Professionalism is a skill, status, methods, character or a standard of a professional or a professionalism and medical professionals should work together for the betterment of the society oral health. Occasionally, unfortunate incidents of negligence may lead to irreparable damage to the patients<sup>[4]</sup>. Failure to read X-ray film correctly, Ultrasound interpreted from an incompetent person, not obtaining consultation from a competent specialist wherever appropriate, failure to give proper instructions and not informing the patient about possible side-effects may lead to complications<sup>[2]</sup>.

In some instances, the dentist is ignorant as the patient does not give correct history, start an alternative form of treatment without informing dentist, does not follow doctor's instructions and discontinues treatment. The damage must not result from other causes than dereliction. It is the duty of the doctor to prove their ignorance<sup>[5]</sup>. The medical professionals should be skilful to diagnose, updated with latest drugs and refer the patient wherever necessary. The dentist should relieve the pain but never harm the patient<sup>[3]</sup>.

Law is an obligation on the part of society imposed by the competent authority, and non-compliance may lead to punishment in the form of monetary fine or imprisonment<sup>[3]</sup>. The Consumer Protection Act was passed on 24th December 1986 for the better protection of the interest of consumers and provide the establishment of consumer councils for the settlement of consumer's dispute and for matters related to it<sup>[1]</sup>. In the lawsuit, records are the most important factors needed to prevail. Only then, these negligent cases may be brought under the scanner of law<sup>[3]</sup>.

#### Materials and Methods

The articles were searched in PUBMED and Google scholar database and a total of 12 articles were reviewed from 2002 to 2018.

### **Negligence in Pediatric dentistry**

A study was conducted to identify the common mistakes, negligence and legal offences in pediatric dentistry. The population in this self-reported study consisted of 25(29.4%) certified, 48(56.5%) non-certified pediatric dentists and 12(14.1%) residents in pediatric dentistry. Participants filled an anonymous structured questionnaire that assessed the information regarding mistakes, negligence and legal offences. It was scored as 0,1- 4, 5-10, >10. The results showed that most prevalent mistakes, negligence and legal offences (MNLO) was related to the performance of the radiographs, bitewing with overlapping teeth (90%), overturned films (30%), film exposure (48%), faulty film development (84%) and exposure of same side of the film (32%). Prevalent MNLO'S included administering sedation to the child who had not fasted (32%), sedating without monitoring (9%), treating children without receiving signed parental consent (15%) and losing a radiograph (94%). It was concluded that MNLO occur commonly during various operative dental treatments. Effective means should be addressed to raise the awareness, implement regulations and limit these mistakes [7].

### **Mishap in Endodontics**

During endodontic procedures a mishap can turn into negligence leading to some legal complications. The dental negligence were the act of injury to patient, guilty mind of the professional, treating the wrong tooth or missed canals, improper diagnosis, not referring to specialists when required and prolonged post-operative paresthesia after the treatment. It was observed that it's always better to promise less and deliver more for a successful and litigation free endodontic practice [8].

In another study of dental operatory there are incidents of ingested foreign body including teeth, restorative materials, instruments like K-file, rubber damn and gauze pack. Accidental swallowing lead to coughing, complications and difficulty in the retrieval of the instrument. It was concluded that dentist should be able to manage an emergency situation in which patient accidentally swallow dental instrument. It was recommended to use rubber dams with flexible frames and use of electronic apex locators. Moreover, rotary instrument can also help prevent file ingestion [10].

### **Negligence with dental hospitals/dental care workers**

A study revealed that Hepatitis B and Hepatitis C infection in Japanese dental care workers was high. The participants were dental care workers (dentists, dental hygienists and dental assistant). It was recommended to have a safe standard of treatment [11].

Hospital managements face complaints regarding facilities, standards of professional competence and appropriateness of therapeutic and diagnostic methods. Negligence can occur in any aspect of professional practice. Act of negligence, which were considered were regarding duty, maintaining the standard, injury resulting from the lack of care, proximity in the negligent act and the resultant injury damages. It was recommended that written records, medical and dental history, chart notes, radiographs, photographs and models should be taken [17].

### **Malpractice in Prosthodontists**

The prosthodontic rehabilitation of the mouth particularly in the advanced complex cases requires careful planning and adequate clinical skills and exacting technical standard.

During prosthodontic treatment complications, injuries, dissatisfaction or failure may occur. When such events occur as a result of negligence or violation of the standard of care they are considered under the term of malpractice and may incur ethical and medicolegal complications. Malpractice can occur at three levels namely, Pre-intervention level, Intervention level and Post-intervention level. Negligence was seen with faulty diagnosis, failure to consult, poor communication with the patient, faulty treatment plan and failure to obtain informed consent [15].

### **Negligence in Oral Surgery**

Tooth extraction other than the one which is intended by the referring dentist is termed as wrong side tooth extraction. This adverse event continued to be one of the major reasons for filing of malpractice claims against oral and maxillofacial surgeons. It was considered as a sentinel event as an unexpected occurrence involving death or serious physical or psychological injury or the associated risk. It was mandated that there must be a compliance with the universal protocol of preventing wrong site, wrong procedure, and wrong person surgery. When the wrong site tooth extraction is identified then, immediately re-implantation with subsequent endodontic therapy may enable retention of the involved tooth. Disclosure of the event must be presented to the patient [16]. It was concluded that wrong site tooth extraction is preventable and can be minimized by the development of an education program, an informative and unambiguous referral form with a pre-operative check list [18].

In another study of malpractice in surgery revealed that third molar is at greater risk of complication than removing other teeth. It was concluded that to reduce the number of lingual and inferior alveolar nerve injuries, the removal of third molar necessitates recent high quality panoramic radiograph and training for risk management in prosthodontics [11].

### **Impact of dental neglect scale**

A cross sectional study was done to know the impact of dental neglect scale on oral health status among different health professionals. Oral health affect our general health and quality of life. A study with a sample of 400 was taken and a questionnaire was used for assessing dental neglect and home dental care practices. Oral Hygiene Index score was fair and dental neglect score<15, whereas majority of the professionals (63.7%) showed a poor oral hygiene and a dental neglect score>15. It was concluded that dental neglect scale was sound method of objectifying dental neglect. Moreover, the Universities should include oral health motivation programme as a component of their academic curriculum and motivate professionals to maintain oral health practices [4].

### **Discussion**

Dentistry as a profession is not objective; in much of its domain it is value- laden and therefore to attempt to restrict this nature when addressing concerns seems to sway towards a protectionist slant [11]. Negligence on the part of patient eg. Patient with history of cardiac blockade and on aspirin (anticoagulant), advised to stop aspirin 3 days prior to extraction and 2 days post extraction by his cardiologist. After tooth extraction, patient was informed by dentist about not to spit blood and follow cardiologist's advice. Patient spit blood continuously without proper medication and was admitted to hospital for significant blood loss. In such situation only patient's negligence to follow doctors advice lead to such complications hence, dentist was not liable [16].

Medical negligence claims are not co-extensive with cases that are the subject of a clinical error. A study in India reported that the overall rate of negligence claims per discharge was 0.13%. Dentists shouldn't neglect the behavior of children in dental clinic. Most of the evaluated distraction techniques have a significant effect on reducing anxiety and fear levels at some point during dental treatment. Distraction techniques during dental treatment may be a good strategy for the management of children's and adolescent's anxiety and dental fear [13]. Another recent study involving a smaller portion of the present material focusing on infra orbital nerve injuries showed that 57% of claims involved general dentists, 37% oral and maxillofacial surgeons, 5% other dental specialists, and 1% by students. Students should familiarize themselves only with the indications, clinical and radiographic examination, and management of impacted teeth, but not be required to perform such procedures [9].

A recent study found that one of the risk factors for both Infra orbital nerve and lingual nerve injuries was treatment by trainee surgeons. In another study of malpractice claims related to third molar removals, general dentists were responsible for the majority (78%) of complications, whereas oral and maxillofacial surgeons accounted for 15%, and other dental or medical specialists for 7%. Malpractice claims mostly involved dentists with less than 10 years experience [3]. In Prosthetic dentistry, faulty, ill-fitting denture causing pain, soreness and discomfort to the patient, pulp exposure of vital tooth during crown preparation due to overzealous preparation, open margins, overhanging restorations, and poor occlusion especially in full-mouth rehabilitation cases are witnessed due to lack of sound treatment planning [2].

In Periodontics, there can be a failure to diagnose or treat periodontal disease in a reasonable time, attempt to treat beyond their level of competence and failure to refer cases to the appropriate specialist. Radiographs are not taken routinely and periodontal probing was rarely or never recorded of known periodontally compromised and already treated patient [21]. In Implant dentistry, injury to subjacent nerve, perforation of sinus, Peri-implantitis leading to implant mobility are considered dental negligence [23].

The Australian Dental Association code suggest that information relating to the patient's oral condition, in the context of past treatment, should not be given spontaneously, but only on request. Often, dental professionals are encouraged to only be objective. This neglects to consider that subjective values play a large part within dental practice; dental professionals cannot purely live within clinical facts. Wherever a patient is given clinical information, without picture of subjective interpretation, communication with the practitioner isn't justified [25].

Therapeutic misadventure (Medical maloccurrence) is an accident or mishap eg. Patient showed no sensitivity to test-dose of lignocaine injection and develops anaphylactic reaction after administration of nerve block. Here no one is at fault, it is only a mischance. The dentist should preserve every patient's complete record and the written remarks, consent forms signed by patient and his witness or parents in case of minor. Maintain record of patient's medical history, current medical treatment if any and drugs to which the patient is allergic. Ensure that all instruments used by the dentist are sterilized before and after every use and aseptic clinical conditions are maintained all the time [17].

In several common law jurisdictions, the standard in respect of how much information patients should be given has moved away from the reasonable professional standard to the

standard of a reasonable patient [18].

## Conclusion

Dentist patient relationship is a confidential and trust worthy relationship. The service rendered by health professionals to the human beings is probably the noblest and caution should be taken before initiating legal action against any Doctor [24].

Mistakes occur in every profession, as it does in life. It is probably every individual's duty to avoid errors and foresee the potential for mistake but, on occasions, it simply may become unavoidable. Every dentist has a duty to warn the patient of risks inherent in the treatment procedure. Following examination, the dentist should carefully decide what line of treatment to adopt [23].

Records are the most important factors needed to prevail in the lawsuit. Legally, Dentist written records carry more weight than patient's recollections. It is concluded that the potential for civil lawsuits against dentists for negligent actions is existent, although the prospect of a Dentist being held liable for criminal negligence is low [11].

There is an overlap between clinical errors and medical negligence claims. Probably no more than 1 in 7 adverse events in medicine result in a negligence claim. It is important to recognize that many negligence claims would not normally be regarded by medical practitioners as arising from adverse events [2].

The dentist has a duty to warn the patient of risks inherent in the treatment procedure. Following examination, the dentist should carefully decide what line of treatment to adopt [6].

Dentists must be aware of dental negligence, as well as the laws governing it, and should be insured under professional indemnity insurance. In the event of legal proceedings, this provides protection and financial support for case settlement and other expenses [3].

Moreover, the patient should cooperate with the dentist while taking complete case history as even a small missing data can mislead the treatment due to patient's negligence [1].

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