



Learning Objectives

- By the end of this session the learners will be able to:
- Define professional negligence
- Describe the scope of Medical negligence
- Discuss the types of negligence
- Explain the doctrine of Res Ipsa Loquitur
- Describe therapeutic misadventure, Novus actus intervenience, vicarious responsibility and precautions against the negligence.

Medical Malpractice

- Professional misconduct
- Medical negligence

Professional Negligence

- **Negligence:**
 - Act of omission
 - Act of commission
- **Professional negligence:**
 - Absence of reasonable care
 - Legal duty of a doctor
 - Fix standards of medical care
 - What constitutes injury
 - Damage & damages



Professional Negligence

- In action for negligence the plaintiff have to **proof:**
 - The doctor owed the **duty**
 - **Dereliction**/Breech of duty
 - **Damage** occurred
 - Cause of damage / **Direct causation**

Professional Negligence

- **Types of negligence**
 - Civil
 - Criminal
- **Civil Negligence**
 - When a patient brings suit in a civil court
 - When doctor brings a civil suit

Professional Negligence

- **Civil negligence involves:**
 - Act on the part of the treating physician
 - Compensable damage
 - CrPC and PPC
 - No legal punishment



Professional Negligence

- **Criminal Negligence**
 - More serious
 - Patient's death occurs
 - Associated with drunkenness
 - Incompetency and inattention
 - Criminal indifference



Professional Negligence

- Section 337-H PPC: Punishment for hurt by rash or negligent act:
- **Burden of Proof**
 - Bear by the patient
 - Preponderance of evidence
 - In civil cases
 - In criminal cases

Professional Negligence

- **Examples of medical negligence**
 - General Errors
 - Medicine
 - Surgery
 - Orthopedics and Emergency Medicine
 - Obstetrics and Gynecology
 - Anesthesiology

- Civil and criminal negligence by a single act



Professional Negligence

- **Preventing Medical Litigation**
 - Awareness of potential areas of litigation and medico-legal problems
 - Good 'doctor-patient' relationship
 - Appropriate training and maintenance of authorized protocol
 - Maintaining standard medical service
 - Proper counseling and informed consent

Professional Negligence

- **Preventing Medical Litigation**
 - Proper investigation
 - Adequate supervision and timely referral
 - Surgical intervention
 - Meticulous record keeping
 - Morbidity and mortality audits
 - Medical indemnity insurance
 - Medical defense

Professional Negligence

- **Precautions against negligence:**
 - Latest advances
 - Proper diagnosis
 - X-rays
 - Specialist consultation
 - Antibiotic cover
 - Consent
 - No procedure beyond skill
 - Instruments

Professional Negligence

- **Doctrine of Res ipsa loquitur**
 - ‘The thing or fact speaks for itself’
 - Conditions
 - In the absence of negligence, the injury would not have occurred
 - Control over the injury producing instrument
 - No contributory negligence.
 - Examples
 - Injury, surgery, transfusion



Professional Negligence

- **Medical Maloccurrence**
- **Novus Actus Interveniens**
 - Unrelated intervening action
 - Element of negligence is essential
 - Examples

Professional Negligence

- **Contributory Negligence**
 - Unreasonable conduct of patient
 - Concurrent negligence by the patient & doctor
 - Examples



Professional Negligence

- **Therapeutic Misadventure / Hazard**
 - Definition
 - Examples
 - Types
 - Therapeutic:
 - Thyroid cancer, breast cancer
 - Diagnostic
 - Experimental

Professional Negligence

- **Corporate Negligence**
 - Administration/management
 - Equipments
 - Employees
- **Product Liability**
 - Physical agent
- **Vicarious Liability**
 - Respondeat superior
 - qui facit per alium, facit per se
 - Negligent choice



Difference b/w Professional Negligence & Misconduct

- Offence
- Duty of care
- Damage to person
- Trial by
- Punishment
- Appeal

● Euthanasia:

- Mercy killing
- Active & passive euthanasia
- Voluntary & non voluntary euthanasia
- Compulsory euthanasia
- Assisted suicide , by action or by omission
- Legalized



Questions

Professional Negligence

- **Contributory negligence:**
 - History, examination, instructions.
- **Negligence of third party:**
- **Novus interveniens:**
- **Therapeutic misadventure:**
 - Drugs side effects
 - Procedures risks
 - Unintentional act

Medical Documentation

- **Medical Prescription**

- Starts with
- Medicines
- RMP privilege



- **Medical Report:**

- Medical information
- For diagnosis
- Starts with
- Examples

Medical Documentation

- **Medical Certificate:**
 - Complete information
 - Starts with
 - Examples
 - Medicinal and legal issues
- **Medical Notification:**
 - Infectious diseases
 - Starts with
 - Examples