
MEDLEGAL YEAR BOOK

2023



Institute of Medicine & Law
Value Driven. Evidence Based.

MedLegal Year Book 2023

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ABOUT THIS YEAR BOOK

The MedLegal Year Book 2023 is in essence, an instruction manual on medical laws for today's busy doctors. The instructions are in the form of simple 'Do's & Don'ts' that can be easily put to use in the day-to-day practice of medicine. It also updates doctors on the new laws and changes in the existing laws that are relevant to them. This book aims to help Indian doctors in avoiding, minimising and/or facing the growing threat of MedLegal issues confidently.

Laws are usually laid down by judgments of the higher courts. Medical Law Cases – For Doctors (MLCD), a monthly law reporter, collects and publishes doctor-relevant judgments, delivered by one Supreme Court, one National Consumer Commission, 35 State Consumer Commissions, and 25 High Courts in India. Each of these judgments has lessons that can be learnt from either the mistakes of doctors, allegations of negligence made by patients, or observations made by courts. These lessons, and at times, even practical experiences of the editorial board, are published as 'Suggested Precautions,' which are the practical do's and don'ts for doctors and hospitals.

All the 'Suggested Precautions' reported in the previous year of MLCD (Volume 15 - 2022) are reproduced under appropriate headings. These 'Suggested Precautions' are further condensed into a one-liner 'Do' or 'Don't'. In some places, a number of 'Suggested Precautions' having the same meaning are regrouped under a particular 'Do' or 'Don't'.

The Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations – 2002 is the statutory law regulating the professional conduct of allopaths in India. Hence, relevant extracts from this regulation are reproduced at appropriate places to make this book complete and easier for cross-referencing.

The MedLegal Year Book is intended to update Indian doctors on the ever-changing medical laws. It is hoped that these practically useful and helpful instructions are not only read and understood but also appropriate changes are brought by doctors in their practice.

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Abbreviations

HPE:	Histopathological examination
ICCU:	Intensive Cardiac Care Unit
ICU:	Intensive Care Unit
IMCR, 2002:	Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002
IPD:	In-Patient Department
MCI:	Medical Council of India
MTP:	Medical Termination of Pregnancy
OPD:	Out-Patient Department
OT:	Operation Theatre

Meanings

attendants:	means and includes relatives / friends
discharge against medical advice (DAMA):	means and includes leave against medical advice (LAMA)
discharge summary:	means and includes discharge card / discharge certificate / discharge note / discharge ticket
hospitals:	means and includes nursing homes / day care clinics
interventions:	means and includes surgeries / procedures
investigations:	means and includes diagnostic procedures
medical mishap:	means and includes accidents
reference letter:	means and includes reference note / reference summary
transfer summary:	means and includes transfer card / transfer note
“You”:	means the doctor / hospitals (reader)

Tips

1. “ / “ between two words or phrases is used in lieu of “and”, “or”, “and/or”.
2. ‘Advisable’ in Do’s & Don’ts means it is not mandatory in nature or statutorily prescribed yet desirable in the opinion of the editorial board.
3. ‘Advisable’ after the second sentence in Do’s & Don’ts means that only the second sentence is not legally mandatory in nature whereas the first sentence is mandatory.
4. Individual doctors must also refer to the following topics from Chapter 12. Hospitals as they are relevant to individual practitioners also:
 - 12.2. Hospitals — Admitting patients
 - 12.3. Hospitals — Discharging patients
 - 12.4. Hospitals — Discharge against medical advice

MedLegal Do's & Don'ts - 2023

PART I – GENERAL

1. Precautions — Unusual

- ✓ Take into account while delivering healthcare services - “Charter of Patient’s Rights” framed by the National Human Rights Commission. 00
- ✓ Let the patient choose the facility for performing investigations. 00
 - In case you recommend an investigation facility to a patient - Ensure / confirm it’s quality / availability / timings / so on.... 00
- ✓ Patients under regular care / follow-up at a hospital / nursing home, such as pregnant patients under ANC - Refuse admission only for solid justifications. 00
- ✓ Pregnant patients..... 00
 - Provide appropriate antenatal care (ANC). 00
 - Prepare / maintain ANC card - Document requisite parameters of each follow-up visit. 00
- ✓ Hospitals - Patients Grievance Redressal Mechanism..... 00
 - Have appropriate protocols to take cognizance of and promptly attend to patients grievances. 00
 - Inform patient / attendants of the measures taken. 00
 - Duly record the same. 00
- ✓ Have appropriate protocols / take proper efforts to avoid accidents / mishaps. 00
- ✓ Show genuine empathy towards patients / attendants who are victims of medical negligence. 00
- ✓ Make efforts / systemic improvements in administration to improve patient safety. 00
- ✓ Take greater care / caution / contemplation in case you decide to wait and watch (doctrine of masterly inactivity). 00
- ✓ Take special efforts to explain anomalies / surprises to the patient / attendants as and when they occur. 00
- ✓ Do not insist that patient should buy medicines only from a particular shop - Inform to get them from any standard shop of his/her choice. 00
- ✓ Write correct name of the patient in medical records..... 00
- ✓ Hospitalized patients / attendants insisting to purchase their own medicines / implants 00

- Take such requests in writing from patient / attendants..... 00
- Document this fact specifically in medical records..... 00
- ☒ Contemplate before 00
 - Offering free / subsidized treatment to the patient.
 - Assuring to pay for the treatment elsewhere, especially after a mishap..... 00
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 - Proper communications. 00
 - Setting appropriate expectations. 00
 - Informing the chances of failure / unanticipated results. 00
 - Proper documentation. 00
- ☒ OT notes..... 00
 - Record details of the intervention clearly / concisely / to the point..... 00
 - Ensure there are no inconsistencies..... 00
 - Do not record anything that is irrelevant / abnormal. 00
- ☒ Be careful in taking a thumb impression on the consent form, especially if the patient / attendant is literate. 00
- ☒ Before making statements before authorities / police / Medical Councils..... 00
 - Take care / contemplate.. 00
 - Consult / involve all persons / departments involved in that case / incident.. 00
 - Cross-check / confirm your statements with documents / records before handing over / filing.. 00
 - Advisable - Take assistance from legal professionals..... 00
- ☒ Record specifically all instances where a patient refuses / fails / expresses inability to follow medical advice, even if it is due to financial constraints. 00
- ☒ Do not raise false bills to claim higher insurance claims..... 00
- ☒ Give patient enough time to contemplate / take a decision after advising any intervention - Emergencies are exceptions. 00
- ☒ Any insistence / request from patient / attendants to rush through the surgery 00
 - Take in writing 00
 - Document this fact in medical records..... 00
- ☒ Advisable - Allot a single file / ID no to every patient although the patient may be visiting OPD of different specialities. 00
- ☒ Record specifically if the patient has consulted other doctors / hospitals..... 00

PART I – GENERAL

1. Precautions — Unusual

✓✓✓ & ✕✕✕

- *Take into account while delivering healthcare services - “Charter of Patient’s Rights” framed by the National Human Rights Commission.*
- *Take greater care / caution / contemplation in case you decide to wait and watch (doctrine of masterly inactivity).*
- *Do not insist that patient should buy medicines only from a particular shop - Inform to get them from any standard shop of his/her choice.*
- *Be careful in taking a thumb impression on the consent form, especially if the patient / attendant is literate.*
- *Advisable - Allot a single file / ID no to every patient although the patient may be visiting OPD of different specialities.*
- *'Group Practice'*
 - *Inform the patient specifically about this arrangement at the outset.*
 - *Take their assent, preferably in writing.*
 - *Medical societies / regulator (National Medical Commission) - Prepare appropriate protocols regarding 'group practice'.*
- *Professional Bodies / Medical Societies*
 - *Ensure that medical protocols are clear / uniform.*
- *Do not associate with unqualified and unscrupulous persons / facilities.*

- ✓ **Take into account while delivering healthcare services - “Charter of Patient’s Rights” framed by the National Human Rights Commission.**

Doctors and hospitals must take into account the “Charter of Patient’s Rights” framed by the National Human Rights Commission while delivering healthcare services. Although this Charter does not have any force of law, nevertheless it comes from an important Institution and every attempt must be made to follow it in letter and spirit. (In this case, the court while holding the hospital (OP) deficient in service for not providing medical records to the patient within the stipulated period has referred to this Charter also.)

Gujarat Consumer Protection Council & Anr. v/s Medical Superintendent, V. S. Hospital & Anr. [15MLCD (j9)]

- ✓ **Let the patient choose the facility for performing investigations.**
- ✓ **In case you recommend an investigation facility to a patient**
- Ensure / confirm it's quality / availability / timings / so on.

When an investigation is advised, it is better to leave the choice of the laboratory to the patient but if you recommend a facility then you have to be sure of its quality, timing, availability and so on. (In this case, it was alleged that the surgeon (OP) advised a centre for USG that was about 30 km away. By the time the pregnant patient reached it was closed and when the patients husband called the surgeon (OP), he replied "what can I do?" USG was performed on the next day and it reported intrauterine foetal death. The court did not comment about the same but such incidents should be avoided at all costs.)

Gagandeep v/s Chunni Lal Memorial Gulati Hospital & Ors.
[15MLCD (j24)]

- ✓ **Patients under regular care / follow-up at a hospital / nursing home, such as pregnant patients under ANC - Refuse admission only for solid justifications.**

Hospitals / nursing homes have all the right to outrightly refuse to admit a patient. But in the case of patients under regular care and follow-up at the hospital, as in the case of pregnant patients who take ante-natal care, refusing to admit for delivery or when the patient faces complications requires solid justifications. (In this case, it was alleged that the hospital (OP) where the patient was taking antenatal care, refused to hospitalize her after intrauterine foetal death was diagnosed and she had to get hospitalized in another hospital. The court did not comment on this allegation.)

Gagandeep v/s Chunni Lal Memorial Gulati Hospital & Ors.
[15MLCD (j24)]

- ✓ **Pregnant patients**

- **Provide appropriate antenatal care (ANC).**
- **Prepare / maintain ANC card - Document requisite parameters of each follow-up visit.**

In any pregnancy, antenatal care (ANC) and ANC card play an important role in identifying impending complications and managing the same. An ANC card must be maintained appropriately documenting all the parameters at each follow-up, preserved with medical records, and produced in court if required. The court, in this case where the patient with preeclampsia had an intrauterine

foetal death, has made a lengthy observation on the importance of ANC. The court drew an adverse inference against the hospital and doctors (OPs) for failure to produce the ANC card in court.

Gagandeep v/s Chunni Lal Memorial Gulati Hospital & Ors. [15MLCD (j24)]



Hospitals - Patients Grievance Redressal Mechanism

- **Have appropriate protocols to take cognizance of and promptly attend to patients grievances.**
- **Inform patient / attendants of the measures taken.**
- **Duly record the same.**

Hospitals / doctors must have appropriate protocols in place to take cognizance of and promptly attend to patients grievances. The patient / attendants must be informed of the measures taken and the same must also be documented. (In this case, the patient had a fall from the wheelchair in the hospital premises while on a follow-up visit. The patient alleged in court that although this incident was informed to the hospital (OP) authorities yet no measures were taken to address the patient's grievances. The court commented that hospital authorities should make systemic improvement in "their grievance redressal mechanism to ensure the patient's safety and to maintain good doctor-patient relationship.")

Director Administration, P.D. Hinduja National Hospital & Medical Research Centre v/s Harsha Ashok Lala [15MLCD (j51)]



Have appropriate protocols / take proper efforts to avoid accidents / mishaps.



Show genuine empathy towards patients / attendants who are victims of medical negligence.

Accidents / mishaps are unavoidable but appropriate protocols / efforts must be in place to avoid them. The least that is expected by the patient / attendants from doctors / hospital authorities is genuine empathy and it can make a big difference in the way the situation unfolds further. This case is an excellent illustration of the aforesaid. The patient admittedly fell from the wheelchair and injured her ankle while she was being wheeled into the hospital (OP) by security personnel. Two pointed allegations made in the court, "made to stand in queue for payment of x-ray charges" and "immediate first aid was not given" clearly indicate that the situation worsened due to lack of empathy that ought to have been shown by the hospital (OP) authorities at the outset.