# MEDLEGAL YEAR BOOK

2018




Institute of Medicine & Law

# MedLegal Year Book 2018



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# ABOUT THIS YEAR BOOK

The MedLegal Year Book 2018 is in essence an instruction manual on medical laws for today's busy doctors. The instructions are in the form of simple 'do's and 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 10 - 2017) 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.

# INDEX

## 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 - 2018

## PART I – GENERAL

**1. Precautions — Unusual**

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## 1. Precautions — Unusual

☑☑☑ & ☒☒☒

- ***Do not readily infer voluntary abandonment merely because the patient has stopped follow-ups / consultations.***
- ***Day-care centers / facilities that do not admit patients / treat patients on OPD basis – Write this fact clearly on signboards / stationery.***
- ***Visiting consultants – Have a proper written contract with the clinics / facilities where you visit clearly specifying:***
  - ***The relationship between the doctor and the facility (principal-to-principal or otherwise)***
  - ***Who will charge the fees***
  - ***How will the professional fees of the doctor be paid / collected***
  - ***What will be the liability of the doctor vis-a-vis the facility***
  - ***Who will be responsible to preserve medical records and/or produce them in court and other authorities?***
- ***Patients seeking DAMA/LAMA – Check / recheck their bills.***
- ***Consent is not required to shift the patient to the ICU / ventilator and vice versa.***
- ***Identify / avoid "conflict of interest."***
- ***Do not heed to patients' request based on astrological grounds that is contraindicated in medical science.***
- ***Exercise caution while using short forms in writing medical records – Use standard shortforms / abbreviations only.***
- ***Advisable – Taking consent from less literate / illiterate patients – Take simple declaration / attestation from a witness.***
- ***Delay in issuing receipts / bills, especially when the patient gets discharged / transferred / dies at odd hours when the billing department of the hospital may not be working – Write suitable instructions on the provisional bill / discharge summary.***
- ***Take patients' history in their own / attendants' handwriting, especially during the first consultation / before hospitalization.***
- ***Do not use patients' videos / pictures that disclose their identity without their prior written permission.***
- ***Before commencing treatment for uncommon / risky / cosmetic therapies:***

- *Prepare brochures / informative booklets having requisite details with figures / diagrams / photographs of the therapy / intervention – Prepare copies of the same in local languages also, if possible – Provide a copy of the same to the patients / attendants during counseling and take endorsement on a photocopy of the same*
- *Video record the counseling sessions, if possible.*

➢ *Verify the signature of patients / attendants signing the consent / admission form with their signatures on official identification proof – Take / preserve photocopy of the official identification proof.*

➢ *Inform the patient specifically the name of his/her primary / principal / in-charge (doctor / consultant / surgeon / anaesthetist) - Inform the patient further in case any change happens in the aforesaid during the course of treatment / intervention.*

➢ *Take photocopy of investigations done on thermal paper.*

➢ *Advisable – "Open nursing homes" – Have written contract with consultants / "admitting doctors" (doctors who admit / manage their own patients and the 'open nursing home' merely provides its infrastructure / other services).*

➢ *Advisable - Doctors working in / owners of hospitals – Take individual insurance cover also.*

➢ *Exercise caution in referring / relying upon medical information available on the Internet.*

➢ *Be vigilant of self-medicating patients and record this fact specifically.*

➢ *On discovering that a patient is a self-medicating one – Record this fact specifically – Take appropriate precautions.*

➢ *Keep copies / maintain records of medical records such as prescriptions / OPD slips that are handed over to the patient.*

➢ *First consultation / before hospitalizing – Ask specifically / record details of hospitals / doctors from whom the patient had taken treatment earlier.*

➢ *Exercise care / contemplate when you have to choose a hospital to admit your patients.*

➢ *When payment of bill has been done by someone other than the patient / attendants:*

- *Provide copies of treatment records / investigation reports / bills / receipts even to such a patient*
- *Give original bill / invoice / receipt to the person / entity making the payment.*

☑ **Document / record on appropriate stationery only.**

Document and record on appropriate stationery only. A prescription must be written on a letter head/prescription pad, investigations must be advised on requisition slip, and outpatient department

(OPD) stationery must be used in the OPD. Doctors who have a wrong habit of writing prescription, advising investigations, etc. on any piece of paper and handing over the same to the patient/ attendants could be inviting legal trouble. (In this case, the patient produced in the court, a small piece of paper with the name of a injection written in the doctors (OP) handwriting as proof that the said injection was given by the doctor (OP) to the patient causing disability to the patient.)

**Dinesh Kumar v/s Dr. Kamal Yadav & Anr. (10MLCD - a25; j51 - February 2017)**

☒ **Do not readily infer voluntary abandonment merely because the patient has stopped follow-ups / consultations.**

Legally a doctor–patient relationship can also come to an end when the patient voluntarily stops consulting the doctor, even without informing the doctor, with a clear intention to discontinue. This is 'voluntary abandonment'. Doctors and hospitals should not readily infer voluntary abandonment merely because the patient has stopped follow ups or consultations. A mere delay, howsoever long, does not signify abandonment and the doctor–patient relationship continues. (In this case, the obstetrician (OP) pointed out that the patient first consulted her for post-surgery complications only on the 47th day of discharge, never visited the hospital thereafter, and on the contrary changed the hospital, and that this was "voluntary abandonment." The court found that the obstetrician (OP) neither advised any investigations nor asked the patient to come for a review. The court, therefore, held that with this background the defense that the patient had "voluntarily abandoned" treatment was unsustainable. The obstetrician (OP) was held negligent for failure to manage the post-surgery complications.)

**Kuckyjohney @ Kucky Merin Punnoose v/s Administrator, St. Thomas Hospital & Ors. (10MLCD - a1; j1 - January 2017)**

☑ **Exercise caution when providing free / subsidized treatment.**

Always have a genuine reason for free/subsidized treatment. This conduct is often looked suspiciously by the courts and patients. (In this case, the patient had stated in the court that she took a second opinion for her post-surgery complications only after she was informed by the obstetrician (OP2) that "her treatment would be free of charge".)

**Kuckyjohney @ Kucky Merin Punnoose v/s Administrator, St. Thomas Hospital & Ors. (10MLCD - a1; j1 - January 2017)**

☑ **Day-care centers / facilities that do not admit patients / treat patients on OPD basis – Write this fact clearly on signboards / stationery.**

Day-care centers or facilities that do not admit patients and treat them as an outpatient (OPD) must clearly indicate this fact on their stationery, sign-boards and such other avenues. (In this case, one dispute was whether the nursing home of the doctor (OP) had facilities to admit the patient or not. The patient alleged that he was admitted and billed heavily whereas the doctor (OP) stated that admission facility was not at all present, and hence, there was no question of admitting the patient. The court, however, did not consider this aspect relevant and held the doctor (OP) negligent for other reasons. This dispute would not have arisen in the first place if the letter head or the prescription pad of the nursing home had indicated the correct position on this aspect.)

**Dr. Akhilesh Chandra Gaur v/s Manik Chand (10MLCD - a9; j21 - January 2017)**

☑ **Visiting consultants – Have a proper written contract with the clinics / facilities where you visit clearly specifying:**

- **The relationship between the doctor and the facility (principal-to-principal or otherwise)**
- **Who will charge the fees**
- **How will the professional fees of the doctor be paid / collected**
- **What will be the liability of the doctor vis-a-vis the facility**
- **Who will be responsible to preserve medical records and/or produce them in court and other authorities?**

Doctors must have a proper contract with the clinics/facilities where they are visiting consultants. Such contracts are rarely executed in India and could result in legal problems for the doctor. The contract must clearly specify what will be the relationship between the doctor and the facility (principal-to-principal or otherwise), who will charge the fees, how will the professional fees of the doctor be paid/collected, what will be the liability of the doctor vis-a-vis the facility, who will be responsible to preserve medical records and/or produce them in court and other authorities, etc. In this case, the doctor (OP) was a visiting consultant at the clinic (OP), that was owned by a nonmedico person, wherein he used to perform Lasik surgeries. The doctor (OP) who was sued by a patient for giving false promises stated in his defence that he was a visiting doctor at the clinic (OP) and used to visit the clinic (OP) once or twice in a month for performing surgeries only; he was never an