



Online Ethics Course

Topic 9 : Negligence, Misconduct and Boundaries of Responsibility



Intended learning outcomes

After completing the topic, learners should be able to:

- Describe the fundamentals of medical negligence
- Provide a basic account of professional misconduct
- Explain the importance of maintaining proper professional boundaries



Medical negligence

Necessary conditions include:

- Establish that a duty of reasonable care exists [see topic 1]
- A breach of that duty must be demonstrated
- The breach must result in some form of harm
- Connection between harm and a breach in the duty of care needs to be established (according to principles of causation)



Cont.

The '*Bolam test*' or principle applies in India (but no longer in the UK) for determining negligence

- Bolam refers to the case of *Bolam v. Friern Barnet Hospital Management Committee* (UK, 1957), under which “a doctor is not guilty of negligence if he or she has acted in accordance with the practice accepted as proper by a responsible body of medical men and women skilled in that particular specialty at the material time”



Cont.

- In the UK, the test for negligence is now based on the ‘reasonable person’ standard (i.e., what a reasonable *person* thinks is an acceptable standard of care as opposed that determined by a responsible body of professional medical opinion)
<http://injury.findlaw.com/accident-injury-law/standards-of-care-and-the-reasonable-person.html>
- Other determinations for negligence could apply in other countries and other jurisdictions



Malpractice

- Malpractice may be said to occur if, when rendering professional service, a doctor fails to exercise reasonable care, skill and knowledge
- In India, *The Consumer Protection Act*, 1986 applies in cases of malpractice

<http://www.mondaq.com/india/x/840398/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/The+Consumer+Protection+Act+2019+Overview>



Professional misconduct

- Definitions will depend on jurisdiction
 - E.g., in the UK, a doctor's fitness to practise is based on adherence to ethical standards (as defined in guidelines published by the GMC); serious and persistent failure to meet these standards can call into question a doctor's registration
- Maintaining proper professional standards is important when trying to ensure patient safety, and when trying to maintain public trust in the profession



Cont.

- Examples of professional misconduct rendering a doctor liable for disciplinary action in India include
 - Disclosing patient information leading to a breach in confidentiality; using agents for procuring patients; performing unnecessary surgical procedures; performing unnecessary investigations; inappropriate ties with pharmaceutical companies; fee-splitting for referrals; signing false medical certificates and reports; claiming to be a specialist without appropriate specialist qualifications etc.



Cont.

- Standards of negligence and professional misconduct have no ethical or legal validity if there is no proper enforcement (i.e., through having a well-functioning system of medical regulation)
- Sanctions should apply if someone is found to be unfit to practise medicine, following a formal period of investigation, such as a period of suspension, an undertaking to do additional training, or exceptionally, losing the right to practise medicine



The law

- Professional misconduct is normally investigated by professional bodies, such as a medical regulator
- Negligence is a separate matter, with its own legal definition (as previously explained); one does not automatically imply the other
- Separate action may be taken by the courts, depending on the details of a case (e.g., to protect the public from a doctor who is seriously incompetent); this could involve civil or criminal proceedings



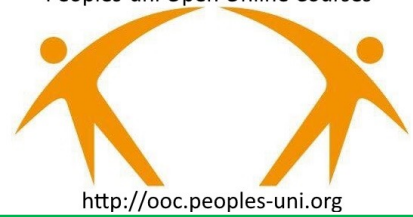
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- In summary, error does not *necessarily* attract blame or give rise to legal liability
- Medical error is only negligent if harm is caused through taking insufficient care; other causes may be human error, carelessness, or systems failure
- In extreme cases, gross negligence or reckless intent can lead to separate criminal prosecutions



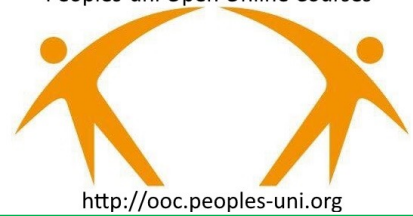
Boundaries of responsibility

- Ethical boundaries in the doctor-patient relationship must be upheld
- Inappropriate relationships (sexual or otherwise) could violate standards of professional conduct, as set out in ethical codes, practice guidelines and/or the law
- Failure to respect these boundaries can bring the profession into disrepute and cause actual physical or psychological harm to patients [see topic 10]



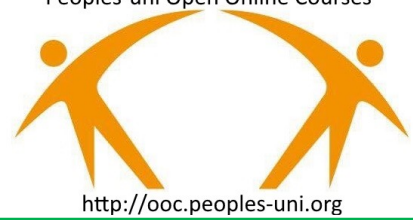
Boundaries of responsibility

- Other professional boundaries include respect for clinical competence; the need to work within the limits of one's expertise and training; maintaining appropriate relationships with other healthcare professionals, as well as with public bodies (such as child protection agencies and the courts)



Reading suggestions (India)

- Murthy KK. Medical negligence and the law. *Indian Journal of Medical Ethics*, 2007 <http://ijme.in/index.php/ijme/article/view/592/1507>
- Bhatt M. The role of clinical guidelines in medical negligence litigation: Has India made the shift. *Indian Journal of Medical Ethics*, 2009 <http://ijme.in/index.php/ijme/article/view/391/700>
- Jindal RP. The truth about medical negligence. *Indian Journal of Medical Ethics*, 2014
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (Amended 2016)



Reading suggestions (other)

- http://www.gmc-uk.org/guidance/ethical_guidance/21170.asp
- http://www.gmc-uk.org/guidance/good_medical_practice.asp
- <http://onlinelibrary.wiley.com/doi/10.1111/j.1743-498X.2011.00516.x/abstract>
- <http://www.karger.com/Article/Abstract/346296>
- https://www.researchgate.net/profile/Jonathan_Wardle/publication/260560613_Plagiarism_and_registered_health_professionals_navigating_the_borderlands_between_scholarly_and_professional_misconduct/links/0c96052d8a9943b4cd000000.pdf



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