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# A Legal Exploration of Deceptive Healthcare Practice and Medical Negligence under Consumer Protection Law

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## ABSTRACT

*The act of misleading or incorrectly informing someone about the accurate and raw nature of a situation is defined as deception. In law, negligence is defined as the deficiency to meet a standard of behaviour authorised to protect society from irrational and unreasonable risk. The basis of tort liability is negligence, which is a major consideration in the majority of cases involving personal harm and property damage. This article aims to give insight into deceptive healthcare practices and medical negligence and how it is applicable under the Consumer Protection Law. It also sheds light on how the concept of healthcare practices and the medical profession falls under consumer protection and tries to explain its ingredients. It discusses who a consumer is regarding the health sector. Deception or fraud can happen to various people in various circumstances. Thus, the article examines the impact of the COVID-19 pandemic on the healthcare sector and how it has led to an increase in fraudulent healthcare practices. It attempts to delve into the broad scope of fraud and malpractice in the health sector, as well as how it affects consumers. Such practises can result in legal action. The legal implications of this have been discussed. In this article, measures and methods for preventing such practices are also analysed.*

## I. INTRODUCTION

Health is an important factor in people's lives and living a healthy life is what everyone wants. To maintain a healthy life, people seek support from hospitals/clinics and other healthcare practices. People blindly believe in hospitals and medical practitioners when it comes to the matter of their health. And because of this reason hospitals, clinics and practitioners tend to misuse the public's trust in them. When these healthcare practices become subject to false, unfair and fraudulent marketing/practice, it amounts to deceptive healthcare practices. Consumers who are in long-term care facilities, such as elderly residents of nursing homes, are also vulnerable to such fraudulent and abusive practices. Thus, people from different strata of society are succumbed to such deceptive healthcare practices. The term "deception" means

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untrue falsehood or any act which is deceiving and such deceptive practices come under unfair trade practices. Other unfair trade practice includes false and wrong advertising, unfair pricing, sale and purchase of fraudulent pharmaceuticals etc. It is approximated that almost 60 billion dollars are vanished annually due to healthcare fraud. There are provisions to protect and safeguard consumers from deceptive practices and unfair trade practices which will be dealt with in detail.

### **Who is a Consumer?**

Section 2(7) of the Consumer Protection Act, 2019 defines a consumer as any person who buys goods or services in exchange for consideration and utilises such goods and services for personal use and the purpose of resale or commercial use.

A consumer is also a person who is:

- a. A patient who avails services from a hospital or doctor and pays them consideration or fee for the services availed.
- b. Any person who pays for the services availed by the patient.
- c. Any person who is the heir or descendent of the patient
- d. Any person who is the parent or spouse of the patient.

### **How does deceptive healthcare practice come under unfair trade practice?**

Section 2(47)(1) of the Consumer Protection Act 2019 states an unfair trade practice as manufacturing or offering spurious goods for sale or adopting deceptive practices for providing service. A few kinds of unfair business practices are misrepresentation, false or deceptive advertising or representation of a good or service, tied selling, fraudulent offers of gifts or prizes, deceptive pricing, and noncompliance with manufacturing requirements. Thus, when hospitals or medical practitioners take advantage of the public or mislead the public by providing them with deceptive or fraudulent services, then such services will come under unfair trade practices. Some examples of deceptive healthcare practices are the following:

- Billing of services and products which are not medically mandatory.
- Billing and payment of services which have not been accurately documented
- Distortion or falsification of the level of service provided
- Charging unreasonably for services or supplies

### **How do healthcare practices come under Consumer Protection Act?**

In the recent Supreme Court judgement of the case *Medicos Legal Action Group vs Union of India*, it was held that services by doctors and medical practitioners' will not be excluded from the scope of the Consumer Protection Act 2019.

The Consumer Protection Act 1986 provides a forum to protect and safeguard the rights of the customers and establishes guidelines for the prompt redressal of their grievances against unethical and deceptive medical practices.

## **II. MEDICAL NEGLIGENCE UNDER THE CONSUMER PROTECTION ACT**

Doctors and Medical practitioners have a basic duty of care toward the patients. But sometimes even if a Doctor-Patient relationship doesn't exist, the court will appoint duty on the doctor. A health care provider's act that deviates from the accepted medical practice and which causes injury to the patient is referred to as medical negligence. The doctors or medical practitioners should mandatorily exercise the standard duty of care to the patients. But it is not essentially necessary for the patients to get cured by the services availed by the doctor.

There are 3 ingredients to constitute medical negligence. They are:

1. The plaintiff is owed a duty of care by the defendant.
2. This duty of care has been violated by the defendant.
3. The plaintiff has been harmed as a result of the violation by the defendant.

In the landmark Supreme Court Case, *Parmanand Kataria vs. Union of India*<sup>2</sup> it was held that every doctor, whether in a government hospital or otherwise, has a professional obligation to provide due expertise in order to safeguard life.

In the Supreme Court case, *Laxman vs Trimback*<sup>3</sup> it was held that, the duty owed by a doctor towards his patient is to have a reasonable degree of skill and knowledge and to exercise this reasonable degree of care to the patient. It is not necessary that the doctor should ensure that every patient that comes to him must be necessarily be cured. What he has to ensure is that he gives the patient reasonable care and competence.

### **How does medical profession come under the Consumer Protection Act?**

Under the Consumer Protection law, another sort of a service inadequacy or service deficiency is medical negligence. It is similar to the law of tort's concept of accountability. But the

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<sup>2</sup> AIR 1989 SC 2039

<sup>3</sup> AIR 1969 SC 128

impotency or the lack to exercise the basic care to the patient, which is generally required by doctors and medical practitioners will fall under the scope of consumer protection laws. In the landmark Supreme Court Judgement, *Indian Medical Association vs. V P Shantha*<sup>4</sup>, it brought medical profession under the Section 2(1)(o) of the Consumer Protection Act 1986. It added in the following categories:

- (i) Unless they are providing completely free services, all independent medical/ dental practitioners doing medical/dental practice.
- (ii) Hospitals that are private and that charge all the patients for the services provided.
- (iii) Hospitals that have free and paying patients and all such free and paying patients who get treatment from such hospitals.
- (iv) Hospitals and medical practitioners paid by an insurance firm for the treatment of a patient

Exception: Hospitals/Medical practitioners who give full free service to all the patients.

In the case of *Kunal Saha Vs. AMRI (Advanced Medical Research Institute)*<sup>5</sup>, the appellant's wife Mrs. Saha was endured from a drug allergy. She went to the respondent hospital for consultation and 3 doctors administered her with a drug, which further worsened her condition and which finally lead to her death. The Supreme Court availed the complainant to obtain compensation of 6.08 crore from the respondent. This case broadened the scope of medical malpractice and negligence in India and gave it a new dimension. In the Supreme Court Case, *Malay Kumar Ganguly v. Sukumar Mukharjee*<sup>6</sup>, dealt in detail about the wide scope of 'medical negligence'. It also discussed the basic standard care that has to be essentially exercised by a doctor. The court also established some standards and stated that there can be no doubt or debate regarding the courts determining medical negligence or service deficiencies. The following guidelines were stated:

- A Doctor cannot ensure and guarantee that the patient will be fully cured.
- However, the Doctor must have reasonable skill and knowledge and a competent degree (not necessarily the highest degree) before he exercises care.
- Out of the many treatment methods that exist if the Doctor adopts one treatment and treats the patient with due caution and care, then it does not amount to negligence.

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<sup>4</sup> 1996 AIR 550, 1995 SCC (6) 651

<sup>6</sup>CAL 692, 2866, 731, 858 OF 2012, SSC 384 (2014)

<sup>6</sup> AIR 2010 SC 1162

- Failure to act according to the standard and skill that possesses. Negligence would be the failure to diagnose with due care, which results in the administration of wrong therapy.
- In a challenging or complex case, the court would be hesitant to hold the doctor responsible for negligence if he is fulfilling his obligations to the best of his ability.

In the Supreme Court case, *Vinod Jain vs. Santokba Durlabhji Memorial Hospital and Ors*<sup>7</sup>, it was held that the act of negligence can be tested if the doctor is certified with the required skills, but not necessarily the highest expert skill and such a skill is enough or sufficient if he exercises like a competent man in that current situation.

### III. FRAUDULENT HEALTHCARE PRACTICES DURING THE COVID-19 PANDEMIC

Healthcare malpractices have been happening even before the pandemic, but it adversely escalated during the pandemic. Healthcare fraud can have fatal consequences, such as the inability to afford respirators, unnecessary medical procedures, or the prescribing of subpar medications. During the first wave of the pandemic, people were rushing to the hospitals for hospital beds and oxygen cylinders. People were hastening to pharmacies to buy masks and hand sanitizers. Initially the cost to get an RT-PCR test done was Rs.1000 and above in private hospitals and later when the COVID 19 cases considerably decreased the cost came to around Rs.500 and below. So thus, the Pandemic has brought in major changes in the healthcare sector and in the economy, the two sectors in which fraud and malpractice is more likely to happen.

There were many more deaths than the thousands recorded each day. Hospitals were overflowing. Drugs, vaccinations, oxygen, and other essential commodities were rapidly depleting. The gap was being filled by pandemic profiteers. Medicine, oxygen, and other supplies were bought and sold via the internet or over the phone in private conversations. Family desperation and grief were exploited by the sellers. Some of the goods that were sold were fake, while others were possibly dangerous. In Uttar Pradesh during the pandemic, authorities accused a bunch of thieves of snatching used funeral cloaks from bodies and selling them as new. In the same state more than 100 vials of bogus remdesivir, an antiviral medicine that many doctors in India are prescribing despite reservations about its usefulness, were discovered by officers. In connection with Covid-related frauds, the New Delhi police also have detained over 210 people on charges of cheating, hoarding, criminal conspiracy, and fraud.

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<sup>7</sup> AIR2019SC1143

In Mumbai according to reports when people were slightly recovering from the pandemic, during a vaccination drive many people were tricked into paying for COVID-19 shots that turned out to just be saltwater. A total of 14 people were arrested, including employees of a government-run vaccination site. The organisation allegedly ran a dozen phoney vaccination centres across Mumbai, defrauding 4,000 individuals out of tens of thousands of rupees, according to the Mumbai police. Instead of COVID-19 vaccinations, about half of the sufferers were given saline solution. Not only in Mumbai, but such a situation has also happened in Kolkata wherein a Member of Parliament from Kolkata was vaccinated with fake COVID-19 vaccine. Another instance was when more than 500 people were injected with a chemical they thought was Covid-19 vaccination in Kolkata. The investigators claimed that fake vaccine labels were put on old vials containing Amikacin Sulphate, an antibiotic which is used to treat severe and serious illnesses. These scams are merely some of the examples of people pursuing illegal gains during India's plague. For example, another incident that happened was, authorities in New Delhi raided a business and seized more than 400 oxygen concentrators as hospitals struggled to secure oxygen supply.

#### **IV. WHAT ACTIONS CAN BE TAKEN AGAINST SUCH PRACTICES?**

Under Section 2(28), of the Consumer Protection Act, 2019, it defines false and misleading advertisements in relation to any product or service. According to this section, a misleading advertisement is one that gives a false guarantee on a product or service by being deceptive about its nature, substance, quality, number, and other key details while purposefully hiding other crucial information. Provision regarding deceptive and fraudulent healthcare comes under this section. Section 21 of the act provides with Powers to Central Authority to impose sanctions against any false or deceptive advertising.

Section 81 of the same Act: Any manufacturer or service provider who causes the publication of a false or misleading advertisement that is detrimental to the interests of consumers shall be punished with up to 2 years in prison and a fine up to 10 lakh rupees; for each subsequent offence, the penalty increases to up to 5 years in prison and a fine up to 50 lakh rupees.

If the act or practice exercised is against or in violation of the consumers' rights then the consumer can take action against such an act. Under Section 2(9) of the Consumer Protection Act 2019 there are 6 rights given to consumers:

- Right to Safety
- Right to Information

- Right to Choose
- Right to be Heard or Right to Representation
- Right to Seek Redressal
- Right to Consumer Education

A formal complaint can be made by the consumer against medical negligence:

1. To the District Forum if the value of services and compensation claimed is less than 20 lakh rupees,
2. Before the State Commission, if the value of the goods or services and the compensation claimed does not exceed more than 1 crore rupees, or
3. In the National Commission, if the value of the goods or services and the compensation exceeds more than 1 crore rupees.

When a complainant makes a written complaint, the forum accepts the complaint and provides a written notice to the opposing party, requesting a written version within 30 days. Following that, the forum would request either the filing of an affidavit or the production of evidence in the form of queries, expert testimony, medical literature, and judicial decisions, following adequate review.

In the case of *Smt. Savitri Singh v. Dr. Ranbir PD*<sup>8</sup> it was held by the Apex Court that the Complainant must prove the carelessness or inadequacy in service by adducing expert evidence or opinion, and that this fact must be proven beyond all reasonable doubts. The Complainant will not benefit from a simple charge of fault. In the case of *Smt. Vimlesh Dixit v. Dr. R.K. Singhal*<sup>9</sup> it was held that the mere claim of negligence will not establish a case of negligence unless it is supported by trustworthy evidence and expert testimony. It's true that the operation was carried out. Although the Complainant has several expenses, she is not entitled to receive reimbursement unless the doctor's fault is shown.

In the case of *Dr. Akhil Kumar Jain v. Lallan Prasad*<sup>10</sup> it was held that it is well established law that the Complainant must prove negligence or a deficit in service by substantiating proof or opinion, and that this fact must be proven beyond a reasonable doubt. In the case of *Amar Singh v. Frances Newton Hospital and Anr*<sup>11</sup> it was held that it is impossible to say with certainty that the other party's conduct of the Complainant was contrary to medical

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<sup>8</sup> 2004;(1) CPJ 25 (Bihar)

<sup>9</sup> 2004;(I) CPJ 123 (Uttaranchal)

<sup>10</sup> 2004;(II) CPJ 504

<sup>11</sup> 2001;(I) CPJ 8.

jurisprudence's rules, or that the opposite party was careless or inadequate in his obligations in any way.

In the Supreme Court case of *Achutrao Haribhau Khodwa vs State of Maharashtra and Ors*<sup>12</sup> it was held that, to establish a duty breach on his side, one must provide evidence. A doctor could not be made accountable for negligence if he carried out his duties with the appropriate care and caution.

## V. CONCLUSION

Measures can be taken to prevent such healthcare frauds and medical negligence. Fighting health care fraud requires prevention more than cure. The faster money is made available for better patient care, the sooner we will approach fraud as a cost to be measured and minimised, like any other. To minimise fraud, employees in the healthcare industry must possess high levels of integrity. The World Health Organization (WHO) estimate the global health care expenditure every year. According to a statistical result issued by the University of Portsmouth's Centre for Counter Fraud Studies and the accounting company PKF in the United Kingdom of Great Britain and Northern Ireland, 7.29 percent of that is lost to fraud (and error) every year. Health care payers, such as public health programmes and private insurers, can safeguard themselves by conducting verification process on new providers, halting payments to those who are suspected of fraud, and exchanging anti-fraud information on emerging trends and schemes. Many organisations, including the Integrated Data Repository, which was created to identify waste, fraud, and abuse, can employ information technology and data exchange to identify fraud. By comparing anticipated and actual prescription usage and distribution over a given time period, computer-aided auditing systems can be utilised to identify drug diversion and other medical frauds. Several tactics at the policy, practise, and grassroots levels can be used to prevent Medicare and Medicaid fraud. Health care professionals can protect themselves from billing and referral fee fraud at the practise level by exercising due diligence. By implementing drug take-back programmes at their locations of practise, practitioners can further aid in the prevention of fraud. Any overpayments from government health programmes that practitioners receive should be reported on their own, as any retained overpayments may result in legal action. Pharmacists can notify their state's Board of Medical Examiners or local law enforcement about suspect prescribing activity in relation to drug diversion and fraud that is tied to it directly. Pharmacists should inform patients about the limitations of unapproved pharmacogenetic testing and encourage them not to change their prescription regimen without

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<sup>12</sup> 1996 SCC (2) 634

first visiting their doctor in order to prevent pharmacogenetic-related fraud.

The widespread problem of Medicare and Medicaid fraud has an impact on both patients and providers. Healthcare fraud is a crime that is becoming more and more prevalent, attracting both new and experienced offenders, and spreading like wildfire across our nation. The opportunities and temptations for fraud are virtually endless given the amount of money that passes through the healthcare system. The general public has to be informed about healthcare fraud's incidence, effects, and preventative measures. We could be in for a true catastrophe if public awareness of this issue doesn't improve and no significant adjustments are done soon. Beneficiaries need to be on the lookout for identity fraud and unapproved medical treatments that are paid for by Medicare or Medicaid. Similarly, because fraud can happen, whether it is intentional or not, physicians and pharmacists need to be aware of the laws governing fraudulent claims, kickbacks, and referrals. Pharmacists can protect the health of their patients as well as the safety of their business by being alert to these risks, especially current developments involving opioid and pharmacogenetic-related fraud. Over the years, research has demonstrated that while it is impossible to totally eliminate the dishonest minority, it is possible to increase the number of the honest majority by creating a strong anti-fraud culture and strong peer pressure.

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