

# Who is Liable? : A Question That Can Change the Life of the Dentist

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## Abstract

India has one of the finest constitutions among all. It deals with every aspect of human activity, dentistry is one of them. The dentist is a health professional whose duty is to practice dentistry at a certain standard of care. The breach of this duty is known as negligence. Thanks to our media, people are aware of many laws but at the same time the definition of grievance has changed, plaintiff commence cases on others for their personal benefits. The reasons could be vengeance, for compensations, egoistic issues. In the entire process justice delivery turns secondary whereas self esteem leads the argument. The case report represents the miscommunication in the doctor - patient relationship and the importance of consent that has to be there whenever an invasive procedure is going to take place. The aim of this article was also to through light on the value of dental records, consent, ethics & laws pertaining to it.

**Keywords:** Compensation; Dentistry; Grievance; Plaintiff

## Introduction

In 21<sup>st</sup> century, nowadays, “Right to know” is overpowering in almost every aspect. People just needs to google it and they get the solutions for almost anything. However using the internet for self-diagnosis and self-treatment is an issue that needs attention. Patients pretend to know more than a doctor. No matter how well versed the doctor is in his/her practice or how he deals with the patient. When the patient comes to the doctor he/she is responsible to give each detail that patient ask for. It is in the hand of doctor to make sure that the patient fully understands the advices or treatment plan, to be more precise patient can use the regional language or simpler words. In legal terms, known as informed consent.

Consent is above everything when it comes to treatment as it allows the doctor to have details that the patient is willing or not to take the treatment and simultaneously makes the patient assured about the medical treatment he/she will get.

By definition: consent means voluntary agreement, compliance or permission to be legally valid, it must be given after understanding the concept and of risks involved [1].

## Reasons for obtaining consent

1. To examine, treat or operate upon a patient without consent is assault in law, even if it is beneficial and done in good faith. The patient may recover damages.
2. If a doctor fails to give the required information to patient before asking for his consent to a particular operation or treatment [1].

## Kind of consents

Consent may be: (a) express, i.e. specifically stated by the patient, or (b) implied. Express consent may be (i) verbal or (ii) written (c) informed (d) blanket (e) loco parentis (f) valid (g) proxy [2].

Every medical practitioner pledges to do their duty under all fair means & ethics but what if he fails? There are sections in our law for malpractices, unethical issues, negligence to deal with such cases.

If we talk about legislative context the informed or verbal consent then they deals in the permission for the subject to participate in studies and to give an opportunity to decide about his or her health.

The supreme court of India after the Samira Kohli case says that the doctor must give patient adequate information for him to understand the various aspects of the proposed treatment. Further, the doctor is required to take the written or valid consent from the patient before commencing a treatment. [<http://www.theindianlawyer.in/blog/2018/03/10/supreme-court-informed-consent-india/>]

When it comes to court cases the foremost thing is to ready with all the evidences that a doctor can have to prove his or her innocence in the name of justice.

What is the proof a doctor can have?

- The case history records
- Basic details of the patient
- The written consent.
- Cctv footage
- Financial records
- The clinic or hospital staff as a witness
- The opd receipt ( in case of hospitals)

There have been number of cases dealing with the law of consent to medical treatment in recent years in all over the world the case of Shaw V Kovac also through light on the importance of written consent. The case is therefore clear authority that the normal principles of causation, loss and damage apply to claims based on negligent failure to obtain proper consent. [<https://www.enablelaw.com/news/latest-news/consent-medical-treatment-recent-case-law/>]

## Case representation

A 52 year old male patient reported to the dental clinic (ESTD 1977) of TIRUPUR district of Tamil nadu. The patient is married and a well established businessman, residing in the same area. The patient came up with the complaint of continuous pain in 2nd lower right molar. The clinical examination revealed that the lower right 1<sup>st</sup> molar was grossly decayed. The oral findings were confirmed by the IOPA (intra oral periapical radiograph). The IOPA further revealed that the 1<sup>st</sup> molar adjacent to it is also decayed. The periodontal status was good enough the alveolar bone was in good condition.

The patient has the systemic history of hypertension. Dental history was of implant and oral prophylaxis. Clinical examination revealed the decayed nature of both the lower right molars as per the treatment planning RCT (root canal treatment) was not in option. Extraction was the only choice. Informed consent was given to the patient that pain can be of because of both the teeth but severity is varying and further complete treatment planning was explained. The patient without knowing the specific reason was only concerned about the posterior most teeth and that was 2<sup>nd</sup> molar. He was ignorant about the carious 46 and was concerned with the removal of 47 only. According to dentist to relieve the pain the extraction of both the teeth was must. When the procedure was started adequate local anesthesia and isolation was given [3].

The dentist in was in thought that the treatment plan is discussed and he has the right to remove booth the teeth. But only informed consent was given no written consent was signed for the extraction by the patient.

After the extraction of both the teeth patient was disappointed at the removal of the tooth he was not even concerned of, without his knowledge. As there was no written consent, dentist was also guilty. Being very satisfied with the previous dental appointment regarding implant-work and oral prophylaxis, the patient demanded an implant prosthesis with respect to the first molar to be installed free of cost, as compensation from the dentist for the negligent act (Figure 1).

Out of guilt, the dentist didn't wanted to put himself in any trouble that would led him to court and can also ruin the reputation of the clinical practice, as per the result the dentist performed the prosthesis, within a week, for free.



Figure 1: Implant of 46

The case depicts the importance of an informed consent from the patient whenever there is an indication of an invasive procedure.

## Discussion

Cases like above are happening on routine basis in one or the other clinics or hospitals. Doctors usually tend to avoid taking the responsibility as it might cost them their reputation, or in a worst case scenario, license abolishment, all of which can be dangerous for any medical practitioner.

If we consider the case, the dentist here, failed to take the written consent regarding the extraction of tooth. As per the diagnosis both the lower right premolars needed extraction because of infection, but the reason for pain was not proved. There are chances that the pain could be relieved by only extraction of 1 tooth. Here the patient was only concerned about the tooth that was paining & wanted the extraction of the same. However only informed consent was given and written consent was not there and treatment was done. Dentist did his duty to free the patient from pain but fails to satisfy the patient completely.

Here come the ethical principles

1. To Do No Harm (non –maleficence) the dentist, in cases where pain cannot be avoided can make attempts to minimize the pain. If feasible, the alternative of minimal or no treatment can be presented to the patient [4].
2. Respect for the patient (Autonomy):

It incorporates at least two fundamental ethical considerations, namely:

- a) Autonomy, which dictates that health care professionals respect the patient's capacity for self determination in making decisions concerning their treatment.
- b) Informed consent, which is an essential component of a patient's right to autonomy [4].  
So, if patient could have filed the case, the doctor was liable for
  - Alleged negligence (wrong extraction)
  - Primary tortious liability: When a dentist is directly liable for an act of negligence in his clinic or hospital is called primary liability. Most dental negligence would come under this category. The remedy for breach of tortuous liability is unliquidated damages as awarded by the judge; it is usually in the form of compensation by cash [5].

When the terms of any such document have been proved by the primary or secondary evidence of the document, no evidence of any oral agreement or statement shall be admitted, as between the parties to the document or their representatives, for the purposes of contraindicating, varying, adding to, or subtracting from the terms of the document. In other words, no oral evidence can be given to qualify the terms of the document and their representatives' in-interest from giving oral evidence concerning the contents of document. [<http://www.lawyersclubindia.com/articles/Oral-Documentary-Evidence-1955.asp>]

This proves the value of written document in the court of law.

The dentist was in fear of losing the reputation if there will be involvement of judicial system. Before the judgment only his impression will be bad among the people of that district. Out of guilt he did what he felt right at that time. Out of guilt medical practitioners are doing more mistakes all over the world, the value of written document in every judicial system is present despite of exceptions in any medical profession the informed consent following the written consent is a must. The case was explained to show the importance of written consent. The international case was also discussed to show the importance of consent all over the globe.

## Conclusion

Humans do mistakes but the medical practioners belong to the noble profession so mistakes from there side are not ignorant. The above case is a classical example that shows the importance of consent. Invasive procedure without consent is termed as battery (trespass). If the doctor could have invested his time in assuring the patient about the treatment plan and after that as per the concern of patient with a written consent the treatment was done, there would have been no chance of getting threatened by the patient. It could be just a matter of few minutes before the treatment, though those few moments would have been beneficial for future consequences. Here we can also see that sometimes even the outside court settlements can be beneficial because of the lawsuit lisenca can also be terminated. Although it happens in serious cases but the lesson is just not do mistakes and duty should be done wisely.

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