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## Review Article

## Medicolegal aspects and anesthesiologists- aware and beware

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## ABSTRACT

For all practical purposes the actual meaning of medico legal term is medical treatment and its legal association to it. One should be aware of all possible medico legal aspects when dealing with patients. Since the government of India labels the practice of medical profession as business one should be aware of consumer protection acts. Day by day the medicolegal cases are increasing and one should have adequate knowledge to take care of themselves. It is not uncommon that the doctors are sued for the sake of money and well-targeted as the profession is legally bound. This article highlights the concerns about medicolegal aspects in relation to anesthesiologists.

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## 1. Introduction

The healthcare system in the developing and underdeveloped countries are highly compromised. The ruling government should consider the health is a part of the services and every country mandatorily make it a priority. Every ruling government should understand that the health care is one of the basic necessities and it is a right of all countrymen. It is not uncommon to see high amount of expenses are done to strengthen up military services to protect the country. Similarly every country should spend adequate amount to deliver quality healthcare services. Presently the branch, anesthesia is ruling every part of healthcare system. Anesthesiologists are called for each and every procedure those are carried out in almost all hospitals.

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Anesthesiologists are involved in performing various duties and are dedicated to deliver the service utmost caution just like a pilot. In the Covid-era the anesthesiologist have taken maximum care of patients all over the world and played a major role.<sup>1</sup> With the advancement in technology practice of anesthesia is also becoming safer day by day. This article helps to understand some important medicolegal aspects for practicing anesthesiologists but not a comprehensive analysis of all medico-legal questions that may arise while practicing.

2. The Consent and Anesthesiologist<sup>2-4</sup>

In common term the consent is nothing but the permission which will be obtained before performing any examination or any procedure whether it is minor or major. As per the consumer protection act (CPA) the consent is mandatory

and one should not forget to take it. There are different types of consent viz, written informed consent, verbal consent and implied consent. The written informed consent is most commonly practiced in India. The consent must have following components viz, demographic data, hospital reference number, the disease profile of the patient, the patient or the immediate relative must understand the language in which it is explained and written, patient should give the consent with free willingness and there should not be any influence of the drug or any other individual external force, the type of procedure or examination that will be done and possible complications, last but not the least, two independent witness. One should understand that the consent which is obtained will carry lot of weightage. It is also ideal that anesthesiologist should start taking the consent in front of camera where both anesthesiologist and the patient and immediate relative's faces are visible with good quality and all verbal communications are recorded. It is important to note that the anesthesiologist must ensure the consent is taken after explaining to the concerned patient or the immediate relatives and not left on the nurses. Before taking the patient to the operation theatre or before performing any procedures the consent should be verified by anesthesiologist himself or herself.

When the patient is unable to provide consent especially when the patient is minor or when patient is on ventilator the immediate blood relative should be able to provide the consent. Again two independent witnesses should counter sign the consent.

The blanket consent which is taken at the time of admission of the patient without mentioning type of treatment and type of the procedure is legally invalid and should not be considered as a reliable consent. At no point of time the signature of the patient or patient relatives to be taken on blank paper.

Consent withdrawal can happen at any time and the clinician should understand that continuing the treatment without the consent is unlawful. Counseling the patient and to the relatives must be made to obtain the consent.

### 3. Ethical Practice

One should understand the ethical practice of anesthesia is more important than the competition. Legally it is important to know that that the guidelines of the anesthesia society and the National Medical Council of India should be followed. At no point of time the anesthesiologist should harm the patient. Preoperative fitness is most commonly asked from the physician and this should not be the case, as the possible complications related to anesthesia are guessed by the anesthesiologist and not by the physician. Anesthesiologist must do preoperative visit and should have a good rapport with the patient and relatives. As per the guidelines by the Indian Society of Anesthesiologists minimum mandatory investigations and mandatory hemodynamic

monitoring should be made perioperative period. Any unexpected intraoperative problem related to anesthesia should be disclosed to the patient and patient relatives and should be mentioned on paper. A counter sign with two independent witnesses should be taken to avoid legal issues. Postoperative patient follow up and relief from the surgical pain is mandatory responsibility of anesthesiologist. It is unethical to be dependent upon the treating surgeon for postoperative pain relief. Airway related issues are most common and one should never get compromised while managing airway especially working in a periphery set up.<sup>5</sup>

### 4. Recordkeeping in Anesthesia and Critical Care<sup>6,7</sup>

Various invasive and risky procedures are carried out by the anesthesiologists in day to day life. One should not be casual in avoiding record keeping. It is ideal to keep the record both electronic and hard copy format. Since various drugs are used in anesthesia it is important to mention the type of drug used, dosage of the drug and timing of the drug used in the patient case sheet. One should also put the stamp and signature with registration number to make notes authentic. There are various ways of record keeping, viz, manual or automated one.<sup>8</sup>

### 5. The Precaution

All practicing anesthesiologist must have professional indemnity insurance which must cover at least twenty times the annual income or 2 crores or whichever is more. The insurance must have an option of unlimited recharges in a given financial year and unlimited claims. The insurance company must provide the lawyer for the free of cost and should cover free lancing of part. It is ideal to have a pan India insurance. One should consider the safety of the patient and safety of self thus ensure that the surgeon has all required facilities. There should be mandatory critical care back up to tackle unexpected perioperative complications. Whenever there is a death on table one should not allow the operation theatre to clean immediately. All possible evidence especially the ampoules and vials of the medicine administered should be stored properly. It is also important to save the data recorded in the monitor and ventilator or anesthesia work station as a part of evidence. Whenever there are unexpected complications are seen it is always recommended to take the help of senior anesthesiologists to solve the issue. One should not do over duty and get burn out syndrome where the quality will get compromised.<sup>9</sup> It is very important to convince the surgeon to have a proper anesthesia related gadgets to improve the patient safety. This will avoid unnecessary problems related to monitoring and delivering anesthesia.<sup>10</sup>

## 6. The Consumer Protection Act (CPA)

One should be aware of this act. In 1986 the Supreme Court has considered the healthcare services should come under CPA.<sup>11</sup> Any negligence leading to the loss of functionality or death will be dragged under CPA. It is unsurprisingly the awareness during general anesthesia is also one of the issue in which the patient can sue the anesthesiologist.<sup>12</sup> Every year many of the anesthesiologists are sued and made to pay lakhs to crores. The complaint may be lodged to civil or to criminal court based on the nature of the issue.

## 7. Conclusion

Medico legal aspects for an anesthesiologist are an important aspect and one should not neglect it. It is always better to work safely than being greedy and compromising the services available in particular set up. It is recommended that every anesthesiologist should have professional indemnity insurance to protect themselves.

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