

Medical negligence: A difficult challenge for radiology

Dear Sir,

The day medical profession was included under Consumer Protection Act (CPA), patients became consumers and doctors became service providers. But unlike other service providers (brokers, real estate agents, etc.), we follow an ethics code laid down by the Medical Council of India. While the ethics code prevents us from acting like other service providers or businessmen, the CPA makes us as accountable as them. This has put us in a potentially dangerous situation. In an increasingly litigious world, not even a bus ticket is sold without the consumer agreeing to a list of legally valid terms and conditions. However, medical fraternity in general and radiologists in particular have not put enough legal safeguards in place.

The Problem Areas for Radiologists

Radiology report is a written, signed document

Unlike other medical specialities, our opinions are mostly in black and white. Despite knowing the liabilities that a written document brings and also the limitations of imaging modalities, radiologists usually commit themselves to a diagnosis. A physician or surgeon has an opportunity to see a patient multiple times, whereas a radiologist gets few minutes with an imaging study. Even clinicians are not always sure of a clinical diagnosis in the first patient visit. Professional expertise is one thing and legally accountable documentation another.

Commercialization of radiology practice

Like most things in medicine, radiology practice has become economy centered. Investments have gone up, but not necessarily the profit margins. Hence, diagnostic departments are under pressure to perform more efficiently. Simply put, the words "efficiency" or "productivity" in radiology mean generating more reports in less time. At the end of the day, it is the numbers that matter more than anything else. Haste increases the chances of errors. "Quality" issues come up only when a referring doctor or a patient comes back with a missed radiological finding or typographical error. It is at these times the radiologist finds himself alone because he is the one who signed the report. The errors may be obvious in hindsight but radiology is not practiced in retrospect. The legal accountability of a medical professional remains the same, irrespective of what fees he charges to the patient. The so called "screening" sonographic examination performed as a part of health check-up plan and a scan performed in an emergency situation hold the

radiologist equally accountable, irrespective of their varying levels of clinical seriousness. The chances of making a mistake are usually with apparently ordinary things.

Unclear baseline professional standards of practice

With more and more precise treatment guidelines coming into vogue, the job of clinicians has become more defined. Guidelines help define the general professional standards of practice. A clinician can have documented evidence of following the right protocol in the form of a well-written case sheet. In case of an adverse outcome, such documentation is important evidence against negligence in the court of law. On the contrary, what matters in case of a radiologist is the final outcome. If the final report is erroneous, any justification on the part of the radiologist looks like a cover-up. To define an "average diagnostic standard" is very difficult in radiology. It certainly cannot be based upon the ability to correctly diagnose specific conditions every single time. The best of us can miss a finding which in retrospect becomes obvious. The machines that we use are not of uniform quality. The degree of experience and expertise amongst radiologists is variable. So are the working conditions and methods of practice. Interpretation of images is also a subjective matter.

Diseases and disorders often come with a lot of emotional baggage and the person who is at the crux of the diagnostic process is the most likely to bear the brunt of misdiagnosis. This is especially true about fetal anomalies. Patients often do not have the same level of trust in a radiologist as they have in their treating physician. This factor again makes matters difficult for radiologists. Missing a clinical finding on inspection, palpation, percussion, or auscultation is also an error. But an error in clinical examination is passed off as "limitation," whereas an error in radiology report is very commonly termed as "mistake" or even "negligence" for that matter.

Expectations versus performance mismatch

With increasing dependence upon radiology as the final step before decisive action, the focus is on radiology reports. While radiologists are the last to get any accolades, they are the first to get the blame. The general feeling among patients is that they pay more for imaging studies, are examined by high-end machines, and therefore are entitled to 100% accurate diagnosis. The inherent nature of radiology practice, limitations of human perception, and the inevitable element of human error negate any possibility of 100% accuracy every single time. Medical literature mentions

that the general rate of missed radiological findings can be as much as 30% despite the improvement in imaging machinery.^[1] Therein lies the rub.

Double standards

Clinicians have the liberty of making cross referrals and performing multiple investigations before making conclusions. On the contrary, radiologists are being increasingly pressurized by hospital managements, clinicians, and patients to deliver reports within a couple of hours. A surgeon taking more than the usual time for a procedure is understood by one and all. However, a radiologist taking more time for a case or requiring a second opinion before issuing a final report incites heated arguments and written complaints. Verbal communication is thought to be adequate while deciding on clinical diagnosis; however, the same is not generally acceptable for radiological diagnosis, even at odd hours. It is a common experience that patients get agitated because of a typographical error in a report but fail to appreciate a good diagnosis in the same report. Patients are usually ready to wait for hours for a clinical consultation, but quickly run out of patience waiting for a diagnostic test. Such is the prevalence of these double standards that they do not seem odd anymore.

Lack of knowledge about the science of radiology

Not much of radiology is taught at undergraduate level in our medical colleges. As a result of this, a sizeable number of medical practitioners are not acquainted with the nuances of imaging modalities.

What the Law Says

According to the law, an error in judgment is not negligence. A physician is expected to exercise reasonable degree of care that is in accordance with the average level of competence.^[2] A physician is required to exercise "reasonable care" and not necessarily "perfect care." Just the fact that a mistake has been made does not automatically make the physician negligent. According to the judge's opinion gleaned from a 1992 Delaware state Supreme Court decision, it is unreasonable to expect a radiologist to be correct all the time, because that would mean elevating the average physician to the perfect physician, and perfection is a standard to which no profession can possibly adhere.^[3] The Supreme Court of India has also opined against the misuse of law for victimizing doctors for trivial reasons.^[2] However, fear and uncertainty persists because of the possibility of uneven outcomes for apparently similar legal issues.

As of today, lawyers are not liable under CPA. This is surely justified because lawyers cannot always guarantee favorable outcomes for their cases. However, the same fact has been sadly forgotten while applying CPA to doctors.

Possible Solutions

The ideal but improbable solution to avoid medico-legal issues would be to not make any mistakes at all. Considering the nature of problem areas mentioned above, many of them are beyond the control of an individual radiologist. The most practical solution seems putting legally valid safeguards in place. The general theme that emerges after going through the opinions of many experts is that patients need to be "officially" informed about the scope and limitations of a diagnostic procedure "before" they undergo one.^[4] No surgeon operates on a patient without taking a pre-operative written consent in which the patient is informed about the possibility of an adverse outcome. It is high time radiologists start taking written informed consent from patients before performing any imaging study. Because a layman is not expected to know much about the fallacies of imaging, it is our duty to make them aware of the same. The consent should essentially include information regarding the following:

- Diagnostic limitations of imaging modalities, especially radiography and sonography
- Inter-observer and intra-observer variability
- Possibility of a false-negative study despite careful evaluation
- Possibility of a rare typographical/proofreading error in a printed document.

Amongst others, I see two possible hindrances for introduction of consent forms in radiology. Firstly, it may face opposition from hospital managements. Management may feel that introducing a step which is not routine to radiology practice would hamper their business. Secondly, some people may look at a consent form as an attempt to avert responsibility on the part of radiologists. However, both these thoughts do not appeal to logic. We routinely take consent for computed tomography (CT) and magnetic resonance imaging (MRI) examinations, primarily because CT/MRI may involve contrast injection and MRI may be hazardous for patients with metallic implants. We just need to make the consent form more informative and extend it to ultrasonography, mammography, and radiography examinations in addition to CT and MRI. Educating a patient is a legally and logically correct step.

A consent does not give us total legal immunity. However, it goes a long way in minimizing misconceptions and acting as a mental barrier against blame game. Irrespective of whether a case is won or lost in the court of law, the mental stress and humiliation incurred by a radiologist during the process is enormous. Even if an allegedly distressed patient does not actually go to the court, the mental harassment caused to the doctor is significant. A consent would surely act as a preventive step.

Most non-radiologist clinicians learn about radiological advances in journals and conferences. While educating the clinicians about the diagnostic possibilities with radiology,

radiologists need to be careful not to raise their expectations to unreasonable levels. In any profession, there are few individuals who are exceptional, but most are average. We should not create a situation where the promises made by the exceptional become the nemesis of the average.

There cannot be intellectual growth in an insecure environment. It is unfortunate if a radiologist is forced to practice defensive medicine because the society he serves is ignorant. This is not to say that radiologists can never be negligent, but to highlight the fact that the nature of radiological modalities and radiology practice plays a very important role in feeding the errors. We are already in an era where radiology has become the center point of diagnosis. The time is apt to start writing "conditions apply" rather than "clinical correlation is suggested" in the footnote.

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