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Editorial

LITIGATION

Recently there has been a remarkable increase in the number of medico-legal cases lodged by patients or their relatives demanding compensation from medical men and government authorities for complications and pregnancies following sterilisation operations and insertion of intrauterine devices. The government of Maharashtra is facing over a dozen cases while the number of cases faced by the government of Uttar Pradesh is said to be ten times more. The story must be similar in other states too. Besides a number of gynecologists are facing similar cases in their private practice. All this is in addition to the increasing tendency of malpractice suits against the profession in general.

Doctors being human are bound to make errors in their judgement. These ought to be accepted by the society. What cannot be pardoned, however, is the negligence on the part of the doctor. The line dividing error of judgement and negligence is often thin and hazy providing good ground for arguments by clever lawyers. All the same, recourse to litigation is a basic right of the patient meant to guard her against erring or negligent medical men. We cannot grumble about this. We must however realise that as the society becomes more materialistic, as the patients become increasingly aware of their rights and as the

modalities of diagnosis and treatment become more and more complex there is bound to be a rising trend for malpractice suits.

Litigation is a necessary evil. But it must be used by the patient as a shield and not as a sword. Unnecessary over-indulgence in it is detrimental to the society because it unduly escalates the cost of medical treatment, medico-legal considerations compete with concern about diagnosis and treatment and sometimes it may deprive the society of excellent health care armaments. The last point may be best illustrated by the unceremonious exist of intrauterine contraceptive devices (barring the hormone impregnated ones) from U.S.A. Fortunately we are not likely to be burdened with rampant litigation prevalent in the west and especially in U.S.A. since our lawyers are not legally allowed to share the compensation money with the litigant and secondly, the complainant has to prove the doctor guilty rather than the doctor prove his innocence. All the same, we must prepare ourselves against the menace of increasing malpractice suits.

The first step in this direction should be to protect ourselves with professional insurance coverage. The present insurance scheme leaves much to be desired. It offers

no protection against criminal charges, does not compensate the doctor for physical, mental and emotional strain involved in fighting malpractice suits and for damage to his practice caused by uncalled for adverse publicity and does not provide a lawyer of his choice to fight his case. We must collectively work out a better scheme with the insurance companies.

Secondly, we must prevail upon the authorities of the hospitals and institutions we are working at, to provide us complete protection against medico-legal problems arising in the discharge of our duties.

Thirdly, we as gynecologists, are shouldering a tremendous burden of executing the family welfare programme of the country. Bulk of the current malpractice suits are related to prevention of conception by temporary or permanent measures. We must demand and obtain from the government full protection against litigation resulting from our activities in the field of prevention of conception and related services not only on government sponsored camps but also in our private practice.

Last, but not the least we must change our practice and conduct in tune with the requirements of the law. We must duly ob-

tain valid and informed consent of the patient before undertaking any surgical procedure. All our professional actions must be within the framework of the law. It is especially necessary to bear this in mind while carrying any termination of pregnancy. Our establishments, clinics and nursing homes must be of adequate standard and properly equipped. All the equipment must, of course, be maintained in working order. Our records of patient care must be chronological, correct and complete. They must be kept in our custody and should never be handed over to the patient. Our records must be preserved for atleast seven years though maternity records must be preserved for 18 long years. We must always provide the patient with a reasonably sound care as expected from our knowledge, skill and experience. We must also remember that we are responsible for the staff we employ including our assistants, locums, nurses and paramedical personnel and hence they must be properly qualified and competent. Our behaviour with the patient and her relatives must be kind, considerate and humanistic. Finally if faced with a medico-legal problem, we should comply with the law and make no attempt to run away from it.

—Mahendra N. Parikh