Online Ethics Course

Topic 9 : Negligence, Misconduct and Boundaries of Responsibility
Intended learning outcomes

After completing the topic, learners should be able to:

• Describe the fundamentals of medical negligence
• Provide a basic account of professional misconduct
• Explain the importance of maintaining proper professional boundaries
Medical negligence

Necessary conditions include:

– Establish that a duty of reasonable care exists [see topic 1]
– A breach of that duty must be demonstrated
– The breach must result in some form of harm
– Connection between harm and a breach in the duty of care needs to be established (according to principles of causation)
The ‘Bolam test’ or principle applies in India (but no longer in the UK) for determining negligence

- Bolam refers to the case of *Bolam v. Friern Barnet Hospital Management Committee* (UK, 1957), under which “a doctor is not guilty of negligence if he or she has acted in accordance with the practice accepted as proper by a responsible body of medical men and women skilled in that particular specialty at the material time”
In the UK, the test for negligence is now based on the ‘reasonable person’ standard (i.e., what a reasonable person thinks is an acceptable standard of care as opposed that determined by a responsible body of professional medical opinion) 

Other determinations for negligence could apply in other countries and other jurisdictions
Malpractice

• Malpractice may be said to occur if, when rendering professional service, a doctor fails to exercise reasonable care, skill and knowledge

• In India, *The Consumer Protection Act, 1986* applies in cases of malpractice

Professional misconduct

• Definitions will depend on jurisdiction
  – E.g., in the UK, a doctor’s fitness to practise is based on adherence to ethical standards (as defined in guidelines published by the GMC); serious and persistent failure to meet these standards can call into question a doctor’s registration
• Maintaining proper professional standards is important when trying to ensure patient safety, and when trying to maintain public trust in the profession
Examples of professional misconduct rendering a doctor liable for disciplinary action in India include:

- Disclosing patient information leading to a breach in confidentiality; using agents for procuring patients; performing unnecessary surgical procedures; performing unnecessary investigations; inappropriate ties with pharmaceutical companies; fee-splitting for referrals; signing false medical certificates and reports; claiming to be a specialist without appropriate specialist qualifications etc.
Standards of negligence and professional misconduct have no ethical or legal validity if there is no proper enforcement (i.e., through having a well-functioning system of medical regulation).

Sanctions should apply if someone is found to be unfit to practise medicine, following a formal period of investigation, such as a period of suspension, an undertaking to do additional training, or exceptionally, losing the right to practise medicine.
The law

- Professional misconduct is normally investigated by professional bodies, such as a medical regulator.
- Negligence is a separate matter, with its own legal definition (as previously explained); one does not automatically imply the other.
- Separate action may be taken by the courts, depending on the details of a case (e.g., to protect the public from a doctor who is seriously incompetent); this could involve civil or criminal proceedings.
• In summary, error does not necessarily attract blame or give rise to legal liability
• Medical error is only negligent if harm is caused through taking insufficient care; other causes may be human error, carelessness, or systems failure
• In extreme cases, gross negligence or reckless intent can lead to separate criminal prosecutions
Boundaries of responsibility

• Ethical boundaries in the doctor-patient relationship must be upheld
• Inappropriate relationships (sexual or otherwise) could violate standards of professional conduct, as set out in ethical codes, practice guidelines and/or the law
• Failure to respect these boundaries can bring the profession into disrepute and cause actual physical or psychological harm to patients [see topic 10]
Boundaries of responsibility

• Other professional boundaries include respect for clinical competence; the need to work within the limits of one’s expertise and training; maintaining appropriate relationships with other healthcare professionals, as well as with public bodies (such as child protection agencies and the courts)
Reading suggestions (India)


- Jindal RP. The truth about medical negligence. *Indian Journal of Medical Ethics*, 2014

- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (Amended 2016)
Reading suggestions (other)

- [http://www.karger.com/Article/Abstract/346296](http://www.karger.com/Article/Abstract/346296)
- [https://www.researchgate.net/profile/Jonathan_Wardle/publication/260560613_Plagiarism_and_registered_health_professionals_navigating_the_borderlands_between_scholarly_and_professional_misconduct/links/0c96052d8a9943b4cd000000.pdf](https://www.researchgate.net/profile/Jonathan_Wardle/publication/260560613_Plagiarism_and_registered_health_professionals_navigating_the_borderlands_between_scholarly_and_professional_misconduct/links/0c96052d8a9943b4cd000000.pdf)
Dr Roger Worthington gratefully acknowledges generous support in the preparation of these slides from Dr R Menezes and Dr V Mergumala