



### **Malpractice and Radiology**

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#### **Abstract**

Legal issues have become a significant part of the practicing radiologist’s world. Most physicians receive little or no information about these issues in their training, and radiologists are no exception.

#### **Keywords**

Malpractice, Legal, Radiology.

#### **Back ground**

Radiology is a specialized branch of medicine using medical imaging technologies to diagnose and treat patients. Like other specialties, radiologists are also liable to claims of malpractice due to diagnostic errors. Errors in radiology differ from errors in other clinical specialties in that the radiological image is a permanent objective record that can be reviewed to check for missed lesions. Such errors when causes significant damages to the patients, in the form of injury or death, attract malpractice claims. The professional role of the radiologist has evolved with increased

involvement in the clinical management of patients. This is especially so with the advances in minimal invasive procedures in interventional radiology. This new area adds to the already existing liability from errors in diagnostic radiology. Apart from the medical malpractice, another important area of legal importance for Indian radiologists is Pre-conception and Pre-natal Diagnostic Techniques Act (PCPNDT- Act) which has stringent rules and regulations to curb female feticide. It is very important to follow and strictly adhere to the guidelines laid down under the act to avoid legal actions.

#### **Definition of Malpractice**

The current concept of malpractice dates back to 1768 in the publication by Sir William Blackstone’s Commentaries on the Laws of England, in which professional malpractice and physicians were linked together. The term “medical malpractice” refers to the

professional negligence of doctors, surgeons, nurses and other healthcare professionals. This is the most common complaint registered against a doctor

Medical malpractice is said to have occurred when the healthcare professional discharged a substandard level of care and, as a result of which the patient suffered

damages. Thus, the three essential components to prove medical malpractice lawsuits are breach of duty, causation and resulting damage.

Although it may seem otherwise to many physicians, the law does not provide a legal remedy for every wrong, real or imagined. In order to have a chance of success, a lawsuit must satisfy what are called the elements of a cause of action.

**In a medical malpractice case, a plaintiff must prove**

1. that the physician had a duty to the plaintiff
2. that the physician breached that duty (i.e., his or her conduct fell below the “standard of care”
3. that this failure was the cause of the injury (causation)
4. that there are damages of a kind that the law will recompense.

The standard of care is more a concept than a rule, since the standard applicable to a given case is decided each time on the facts of that case based upon expert testimony. Generally, the standard of care is met if the radiologist can demonstrate that he or she acted in a reasonably prudent manner under the circumstances. Published standards, such as those issued by specialty societies<sup>3</sup> have no legal standing other than serving as suggestions which a court, an expert or jury may or may not accept.

If the standard has been met, then there is no liability. This is the first and most effective line of defense, and lawyers for each party will attempt to find

expert testimony favoring their side of this issue. If the standard has not been met, the case is still defensible if the jury can be convinced that the patient’s injury would have happened anyway (ie, failure to meet the standard was not the cause of the injury). For example, a cancer was so advanced that a delay in diagnosis made no difference in the outcome of the case, or that other injuries were so severe that the patient would not have survived anyway, despite a missed diagnosis by the defendant physician. It can be difficult to persuade a court with such a “causation defense,” but not impossible.

Expert testimony almost always plays the crucial role in deciding these questions and thus the outcome of the case. Given this fact, the defendant radiologist often has little control over the outcome once a suit is filed. However, there are things that the radiologist can do to improve the chances of a favorable outcome.

1. **Avoid** discussing the case with colleagues. Such discussions are not privileged and their content may not be favorable to you. The plaintiff’s attorney likely will ask with whom you have discussed the case.
2. **Never** attempt to alter medical records, such as radiology report. Discovery of such an act, which is likely, will result in a very unfavorable settlement because a loss at trial is virtually certain, including the possibility of punitive damages. Furthermore, alteration of medical records is a felony in raising the specter of a jail sentence, fine, or loss of medical license.
3. Make it a **habit** to enter a note in the chart after every procedure done, even though intend to dictate a formal report. The note is a legal document contemporaneous with the event and written in own

hand writing, a fact that may have legal significance or even turn out to be crucial.

4. A **willingness to talk** honestly with patients is a good general rule, but only before the fact. Once a suit has been filed, limit conversations on the subject to attorney.

### **Radiologic Errors**

Radiologic errors in diagnosis can be of two types, cognitive and perceptual errors. Cognitive errors are those in which an abnormality is seen but its nature is misinterpreted. The perceptual errors or the radiologic 'miss', are the one in which a radiologic abnormality is not seen by the radiologist on initial interpretation. Of the two types, perceptual errors resulting in false-negative errors are the most frequent accounting for 80% and the majority of which includes failure to diagnose breast cancer on mammography, lung nodules on chest x-ray and fractures on skeletal radiographs. Such errors of perception is influenced by multiple factors like lack of knowledge, faulty reasoning, under reading, inadequate exposure, limitation inherent to the diagnostic test, non communication with the referring clinician, no adequate clinical information available etc. Certain psycho physiological factors affecting visual perception like level of observer alertness, workload and fatigue, duration of observer task, distracting factors, conspicuity of abnormality and others also contribute to errors

### **In Indian Law, doctors can be held responsible under**

1. Civil suit consumer court: Consumer protection act (CPA)
2. Case in medical council
3. Case of criminal negligence: The main section under which a criminal case is filed against doctors

is Section 304A of the Indian Penal Code which deals with causing death due to rash and negligent act. The punishment is two years imprisonment or fine or both. Other sections include Sec 337 (hurt) and Sec 338 (grievous hurt).

4. Law of Torts.

### **Further Reading**

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