



## DOs AND DON'Ts

### MEDICO-LEGAL PITFALLS IN COSMETIC SURGERY AND COSMETIC DERMATOLOGY

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In recent years, there has been an exponential rise in the demand for cosmetic surgery in this country.

There are many obvious reasons for this viz. the craving for youth and beauty in Society, no doubt fuelled by images in print and electronic media, movies and other communication channels; the mind-boggling advances in Medicine and technology and easy access to these; the steadily rising disposable incomes of people in the wake of economic upturn in the country and the fact that undergoing cosmetic surgery has lost any stigma it may have had in the past. In view of this, cosmetic surgeons have probably never had it so good. Interestingly, this overwhelming demand for surgery has not been dampened by the fact that no Insurance Company re-imburses medical costs of cosmetic surgery!

In no other medical specialization does the consumer status of the patient and the service provider-tag of the doctor get underlined, as in cosmetic practice.

However, cosmetic surgeons, and indeed the non-surgical cosmetologists as well, need to recognize that the attendant risks of medico-legal liability are now an increasingly challenging reality. It is worthwhile preempting these problems by trying to understand their genesis.

Generally speaking, Cosmetic surgery is considered to be a high-risk specialty as far as malpractice litigation is concerned. This is underscored by the fact that Indian insurance Companies have steadfastly refused to underwrite risks of liability following cosmetic surgery. In the Western countries, this is not the case and one can get Insurance cover against this liability. Ironically, the Insurance Companies deny cover to those who need it most, just as Banks are eager to give loans to those who don't need them. Nevertheless, the good news is that AMC fought long and hard on this issue and eventually succeeded in getting it's Insurance.

Company to cover this liability even though at an added cost. AMC cosmetologists can breathe easy since they can now get malpractice indemnity. They can also consider themselves unique since no other Insurance Policy in the country affords this protection.

Getting back to the question : Why are cosmetic surgeons more vulnerable to medico-legal problems?

**The following factors may explain this :**

- a) The quality of results is ultimately assessed by the patient and hence extremely subjective.

- b) There is more than average risk of a mismatch between patient's expectations and results obtained.
- c) Patients who seek cosmetic surgery could have personalities which are less likely to tolerate imperfection.
- d) Possibility of permanent disfigurement adds to the risk of patient wanting to claim 'damages'.

Of course, the possibility of pre-operative and post-operative complications would be the same as in other branches of surgery though there are specific complications such as under or over correction, asymmetry, implant failure, disfigurement, and so on.

Perhaps, the key preventive measure lies in patient-selection. One must understand the motivation, expectations as well as subconscious desire of the patient before elective surgery. You must discourage wrongly motivated patients especially patients below 18 years. Do not let a patient bully you into an operation or a procedure as it is safer to say 'No' before an operation than "Sorry, I couldn't give you the result you wanted" after the operation. And for those whom you decide to operate, build realistic expectations. Beware of the excessively demanding patient who brings photographs, drawings and architectural specifications! In relevant cases, insist on a psychological assessment of the patient prior to surgery, in particular, if you detect any clues of dysmorphism in the patient (Def : an obsessive fear that one's body or any part of it is repulsive or may become so).

### Three other important points :

- 1) Exclude financial gain as a criterion for

patient selection. I have come across some young practitioners who tend to do certain procedures often on account of the acquisition of a new costly machine.

- 2) Do not overpromise and under perform. In fact, let it be the other way around.
- 3) Know your limitations and undertake to treat patients within the scope of your training and qualifications.

An issue of the greatest importance is accurate and diligent record-keeping and cosmetic surgeons cannot afford to be lax in this respect. The pre-operative or pre-procedure photographs are important documents and need to be meticulously recorded and preserved. However, a warning that may be sounded in this regard : Do not forget to take explicit written consent of the patient before taking photographs. A number of our members have landed in malpractice claims by patients on account of this.

Additionally, posting some of these photographs on social media may be quite tempting but must be done with great caution and circumspection as it can become a very sensitive issue for the patient and a very sticky ethico-legal issue for you!!

**Unquestionably, the importance of patient's consent for surgery cannot be overemphasized. The following points must be remembered :**

- a) Consent taken should not of the 'routine' type. As far as possible take 'operation-specific' consent which details the procedure as well as the possible risks and complications. For example, specific consent documents should be designed for, say Liposuction, Botox treatment,



- Laser treatment, hair transplants, chemical peels and so on.
- b) Preferably, consent should not be in a language the patient does not understand i.e consent forms should be designed in regional languages as well.
  - c) Caution : Consent of patients below 18 years of age is invalid. The legal guardian ought to be giving consent on behalf of such a patient. Operating upon a minor merely with his or her consent can attract the penal charge of assault and battery.
  - d) 'Informed consent' is mandated by law in the USA and not taking it is considered as negligence per se. Indian courts too are taking a similar view as evident from a few recent judgments. Informed consent involves making sure the patient understands the nature of his condition, the alternate treatments and procedures available; the nature of the proposed treatment and the chances of success or failure of the procedure.

A vital factor that adds to vulnerability of cosmetic practitioners is the fact that the qualification criteria for cosmetic practice are highly unregulated in this country. Unqualified or sub-qualified persons can call themselves cosmetic practitioners as there are no strict statutory criteria for the same. Advertisements in the lay media by all and sundry claiming to be doing cosmetic practice further compound the problem. On the other hand, in the USA for example, in 21 States only qualified physicians are permitted to use lasers in their practice.

Another important cause of malpractice litigation lies within us viz. the proclivity of many doctors to criticize colleagues, especially the previous treating surgeon.

Often this amounts to provoking the patient and many a litigation has its genesis in ill-advised and provocative statements by the second surgeon. This factor can be easily minimized, if not eliminated, by simply resisting the temptation to indulge in one-upmanship.

Lastly, the incidence of allegations by patients of sexual misconduct, or inappropriate behavior against Cosmetic surgeons, is more than the average for all other Specialists. Hence special care must be taken in this regard and male doctors must NEVER examine female patients without the presence of a female attendant or female relative.

Recently, 3 cosmetic surgeons faced medico-legal problems-two in cases of Liposuction and one in a case of mammoplasty. In one case, of Liposuction, the patient demanded that her money be refunded or else she would make a nuisance of herself (hints of blackmail).

Non-surgical cosmetic practitioners are equally vulnerable and as much at risk as their surgical colleagues. Let me give a few illustrative (but real) examples.

\* A 24 year Spanish female model was referred to a Dermatologist by a modeling agency for acne of the face. She was prescribed Cap Isotretinoin 20 mg and advised to follow-up after 1 month. The patient left for Dubai the next day. After 15 days the dermatologist started receiving a series of e mails from the modeling agency asking for answers to the questions of another doctor in Dubai. Why pregnancy was not ruled out in this patient? Why she was not counseled on not getting pregnant? Why lipid profile was not ordered before starting



the medication? Legal action was threatened if satisfactory answers were not provided.

The member was assisted in replying to these queries appropriately and the matter quietened down but not before undergoing much anxiety and having learnt a few lessons.

- \* Tattoo removal resulted in burns and skin necrosis. Doctor said that it was a very simple procedure. Allegation : Doc had used infrared coagulator device. Should have used ultra short pulsed NdYag laser.
- \* Excessive scarring resulted after removal of hemangioma in leg of infant.
- \* Missed diagnosis of malignant melanoma leading to spread.

- \* Adverse reaction of drugs is an important cause of allegations of negligence against dermatologists. For example, a patient developed aseptic necrosis of head of femur following long term use of potent steroids.

Despite all precautions, we may not be able to avoid medico legal problems---but we should definitely try to put into place some of the measures outlined above, though these efforts must be sincere and not 'cosmetic'!

And, as always, it is better to be safe than sorry!

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