DOS AND DONTS / GRASP / MAY 2010 / LALIT KAPOOR

MEDICO-LEGAL IMPLICATIONS OF NOSOCOMIAL INFECTIONS

Most of us believe that infections occurring in patients post-operatively or post-admission infections occurring in patients admitted to hospital for medical treatment ,can be labeled as complications and need not be a matter of concern medico-legally. However, this is not true.

This is a subject that has been discussed inadequately and we ought to analyse it's possible implications to obtain a proper perspective .This would perhaps , prompt us to adopt preventive measures.

Nosocomial infections , also called " hospital-acquired infections", are infections acquired during hospital care which are not present or incubating at admission. Infections occurring more than 48 hours after admission are generally considered nosocomial. Definitions to identify nosocomial infections have been developed for specific sites e..g urinary , respiratory and surgical site infections.

Let us consider an example of an easily diagnosed and dramatic category of hospital acquired infection .
An Ophthalmologist in a private nursing home posted 5 cases of cataract surgery on a particular day.Post-operatively , 3 of these cases developed infection and the patients lost their vision .The patients were all retired school teachers. A lot of media coverage followed and the Govt even appointed an expert committee which inspected the operating facilities ,etc . The findings of the committee indicated negligent practice by the surgeon leading to hospital acquired infection as a result of which the patients had lost their eyesight.

A Consumer organization helped the patients file a complaint before the Consumers Redressal Forum .Our medico-legal cell considered this case to be 'indefensible' and an out-of court settlement was negotiated and concluded .

Hospital acquired infections (HAI) are an important cause of mortality and morbidity. It is estimated that in the USA , nosocomial infections account for 2 million infections , 90000 deaths and 4.5 billion dollars in excess healthcare costs every year.

Alarmed at these figures and pressurized by the public , 15 States in the USA have through legislative action mandated public reporting of hospital acquired infections. Many other countries have put in place legislations and protocols for dealing with

HAI which is considered to be in the domain of public health legislation.

A recent case in a leading Mumbai tertiary care hospital raises a number of issues , many of which , to my mind , are still unresolved.
A patient was operated for vaginal hysterectomy . Post-op the patient made an uneventful recovery and was discharged.Though 2 Units of blood had been reserved for her , no transfusion had been necessary.A month later , the patient developed jaundice .On subsequent investigations advised by a Physician , she tested positive for HCV . On learning of its long-term implications , the patient filed a complaint in the Consumer Forum claiming that she had acquired the infection during her hospital stay on account of the negligence of the doctors and hospital and she deserved to be compensated for the same .. Irreparable and grave harm had been caused to her by this negligence resulting in an incurable disease. A sum of Rs. 25 lakhs was claimed as compensation.
The following points were raised by the complainant:

1. Patient had been thoroughly investigated pre-operatively and had been certified free of all diseases..
2. Two physicians had clearly told her that HIV C could only have been contracted during surgery or in the subsequent hospital stay.
3. She had never received any blood transfusion in the past .The only reason she contracted HCV was due to use of contaminated instruments , syringes , etc. while in hospital.
4. All doctors, nurses, assistants and technicians ought to be periodically screened to ensure that they were free of all viruses and infections which they could transmit to the patients whom they dealt with. There is no evidence that the hospital had any such system in place.

The Surgeon contended that surgery had been uneventful and no blood transfusion had been necessary. Her surgery was done under complete aseptic precautions and disposable equipment incl gloves , syringes , ,etc had been used. Instruments had been sterilized as per standard hospital protocol and no unsterile instrument had been used. He further stated that he was submitting his own HCV report which was negative.

The case is still pending in the Consumer Forum and the outcome is awaited. Meanwhile , we have in it enough food for thought as far as implications of hospital acquired infections are concerned.

- Firstly , most of us routinely do HBsAg , HIV and other routine tests pre-operatively. But how many of us do HCV routinely ? Should HCV testing be part of the pre-op investigations ?I understand some hospitals do indeed carry out HCV testing pre-op.

- However , despite HCV being negative , what if the patient was in the window period , and tests positive subsequently ? The same would apply to HIV as well.
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- What about nursing staff and attending doctors being periodically screened for a host of infections ? What about pre-employment screening ? Should it be done and is it a normal practice ?
- Can a nurse or doctor who tests positive for any infection be debarred from handling patients, conducting operations ? A surgeon in a leading Cancer hospital who tested positive for HIV was prohibited from conducting any surgery . Aggrieved by this decision, he filed a petition in the Bombay High Court. The Court , in its order . upheld the decision of the hospital and asked the hospital to assign him administrative duties .
- Can a patient demand to know the infection status of the treating doctor ?
- In the event of alleged hospital acquired infection , following legal provisions could be invoked by the patient : (1) Medical negligence –claim for compensation as damages under the Law of Torts (2) complaint under criminal law under various sections of IPC e.g. causing grievous hurt, or Section 304 A in case of mortality (3) complaint to Medical Council for violating code of ethics.
- Can doctrine of *res ipsa loquiter* be applied in case of HAI ? In one court case it was ruled that HAI cannot come under this doctrine because infection could have occurred in the absence of someone's negligence .
- From hospital or doctor's perspective , what kind of documentation would be helpful to disown HAI ?

These issues need to be analysed at length . Present space is insufficient. Hence the possible issues have been merely defined , essentially to provoke and have your grey cells ticking. Meanwhile , readers are requested to respond with inputs so as to enable us to make a comprehensive presentation in the next issue of DO's & DON'T's after taking permission from the Editor for additional space.

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