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Defensive Medicine: Is It Legitimate or Immoral?

Pramod Kattel[1]

[1]Department of Obstetrics and Gynaecology, B. P. SMRITI Hospital, Basundhara, Kathmandu, Nepal and Nepal Law Campus, Exhibition Road, Kathmandu, Nepal.

Dear Editor,

I got the opportunity to read a nice manuscript "Challenges of New Healthcare Reform Act 2017 and Possible Rise of Defensive Medicine in Nepal".[1] I would like to thank the authors for writing on hot topic with regard to Nepalese context and highlighting the possible rise of Defensive medicine in Nepal. However, I personally felt, it would have been better if the authors had used correct name "Muluki Aparadh (Samhita) Ain, 2074" rather than using different name at different places of single manuscript [New Healthcare Reform Act 2017; new "Muluki Ain"; 'Muluki Aparadh Samhita Ain 2074/ Criminal (Code) Act 2017; Criminal Code Act 2017]. Also, it would have been better if the exact name "The Constitution of Nepal" was used if intended to mean the latest one instead of mentioning Nepalese Constitution while citing article 296(1) as seven different constitutions have been in existence in Nepal and which constitution the authors meant is not clear. In addition to them, It would have been nice of the authors if they also had focused on different lackings of the "Muluki Aparadh (Samhita) Ain, 2074" like use of abstract words such as "considerable long experience", "minor wounds" or "simple medications" in Chapter 19, Section 230(2). This "Muluki Aparadh (Samhita) Ain, 2074" uses words like "malpractice" but fails to define what "malpractice" is and who defines it. As stated in "Section 240 Limitation" of "Muluki Aparadh (Samhita) Ain, 2074"; If from act under Section 230(4), 231, 232, 233(4), 235 and 238(4), death occurs, there is no time limitation for filing a case. This section creates confusion regarding for how long medico-legal documents are to be kept and it also increases the risk of abusing medical personnel. If a patient party wishes to trouble medical personnel, S/he can do so for indefinite period of time. Such too much flexible provision should not be kept which can keep health personnel under constant stress throughout the life.

As we know, rapid development of medical technologies and expertise in medical care has caused increased expectations from physicians regarding better care. These high expectations if not met disrupts physician-patient relations.[2] These expectations and mistrust have developed a trend of filing medico-legal law suit against treating authorities. To avoid it, concept of defensive medicine arose in patient care since 1978.[2,3] As lawsuit in medical field increases, practice of defensive medicine also increases in similar fashion.[4] Defensive medicine implies medical actions being performed to prevent from potential law suit rather than actual patient's need.[3] In true sense, it is a deviation from standard medical practice. At times it is practiced in individual level depending upon behavior of patient parties.[2] When aggressive patient parties or visitors in large number approach health centre disturbing patient care and ask for guaranteed treatment especially in cases like road traffic accidents, the practice of referral is opted to avoid potential vandalism.[5]

The main significance of defensive medicine is to get protected from medical law-suit.[2,3] It is also done to avoid criticism, complain, reputational loss or vandalism risks.[6,7] The practice of defensive medicine at times may be misused for personal gain based on added investigational benefit.[6] It may not provide additional benefit to patient and even may harm due to development of unwanted complications with addition of unnecessary interventions done from medical law suit point of view. This may develop a culture of "assurance behavior or positive defensive medicine" i.e. performing additional tests, interventions and observations to get assured rather than medically required; or "avoidance behavior or negative defensive practice" i.e. avoiding seeking care of cases with high risk of mortality.[2,6] In contrast to above and based on final results of investigations, it is considered "positive" if it provides benefit for patients and "negative" if becomes detrimental to patients but from physician's perspective, defensive medicine is a pattern of practice which in overall increases their safety.[3]

In medical sector, the areas where it is applied are vague ranging from diagnostic tests to operations on patient. It varies from laboratory (lab) tests, diagnostic

Correspondence: Dr Pramod Kattel, Department of Obstetrics and Gynaecology, B. P. SMRITI Hospital, Basundhara, Kathmandu, Nepal. Email: pramodkattel85@gmail.com, Phone: +9779847088684.

tests, prescription and hospitalizations to surgeries. It is more prevalent in specialties like emergency medicine, obstetrics, neurosurgery, orthopaedic surgery and general surgery.[5,6,8]

The commonly practiced mode of defensive medicine is refusing treatment of critically ill patients. There may be prescription of unnecessary examinations and tests along with consultations or referrals or follow-ups. Hospital admissions will increase on name of observations along with addition of unnecessary surgeries.[3]

Defensive practice disrupts the physician-patient relations and increases mistrusts or gaps between them along with increased risk of conflicts. It will also impair patient's physical and psychological health. Defensive medical practice will promote guidelines based treatment rather than physician's judgments restricting physician's mentality, creativity and medical progression.[3]

It may even hinder the development of specialists on potential risky subjects like critical care and trauma care.[5] The risk of litigation may compel physicians to leave their job.[7] Any unnecessary complaint or litigation affect negatively on treating physician at personal level. S/he may land up with feelings of anger, guilt, shame and loss of confidence.[9] Defensive medicine also negatively affects teaching-learning practices during residential and sub-specialty trainings. In overall, it affects health care in long run as the trainees who are future specialists lack skills to tackle difficult situation and treat in emergency conditions. Lack of motivation also decreases academic productivity of faculty members.[8]

Defensive practice increases the overall health care costs by about 2 to 28% in ascending order for surgeries, prescriptions, hospitalizations, lab tests and diagnostic tests.[3,6] For example, a computed tomography (CT) scan might be ordered in case of headache where potential danger is not appreciated to rule out life threatening conditions just to avoid potential law suit adding radiation risk to patient in addition to cost of care.[5] It only have added value in legal standard of care rather than actual standard of care.[8] Higher the unnecessary tests, higher the risk of false positive results and risk of landing into unnecessary interventions.[3] The more defensive practice by colleague is done, the more other colleagues become legally vulnerable. If they do not do so, they are charged of not providing standard of care as repetition of even unnecessary investigations by many colleagues ultimately becomes a part of standard care.[8]

By not attempting treatment, there will be increased number of deaths among critically ill patients. Along with it, major centres will not accept such patients and the chances of dying on ambulance or on the way to hospital searching for centres that will admit such patients will increase.[7] Cost of care increases as patients will be referred from one place to another for treatment. Work load to specialists increases in the name of consultations (for the sake of avoiding potential law suits) and increasing safety of primary care physicians. With increase of unnecessary hospital admissions for observations, the bed for genuinely needed patients decreases. Surgeries like caesarean sections will increase without valid feto-maternal indications as physicians will not be in position to take risks for betterment of patients. When taken views of obstetricians, the only regrettable caesarean sections will be the ones not done. This thinking aroused just because of risk of malpractice law suits. With the increase of unnecessary surgeries, there will be waste of human and economic resources and may cause harm to patients. It violates principles of medical ethics regarding rational use of social and health resources for better patient care disrupting physician-patient relationships. In places where physician patient ratio is less than stated by World Health Organization (WHO), it even hampers on care of maximum patients and the later should wait for longer time to get appropriate treatment. Defensive medicine helps to flourish insurance companies as new schemes for medical liability coverage will be on rise. It is practiced in large number in specialties which pay more for liability insurances.[3]

Defensive practice increases the system of keeping medical records for longer duration of times than required which is again a waste of resources but on other hand it also encourages to keep it properly.[2] It also encourages institutional and guidelines based practice.[3,5]

Defensive medical practice has emerged to be a worldwide problem irrespective of country boundaries, regions, economic status, ideologies, cultures and religions. As every case in medical field is different, similarly every case is also taken as potential lawsuit case and acted accordingly.[3] Medical law suit is usually filed based on types of treatment (Medical or Surgical- Diagnostic/ Therapeutic), indication, timing and technique used. Delay or failure of diagnosis or treatment is another sector. Within these frame, physicians use the defensive medicine to protect themselves from potential law suit. Whatever act is done from physician's part, it should be justifiable and ideally be harmless to patient, if benefit cannot be provided.[4] Unless a special bench or court is set up to differentiate between medical error, medical negligence and complications; the practice of defensive medicine will flourish.[8]

Whether the practice of defensive medicine is legitimate or immoral is a matter of discussion but these days it

has emerged to be demand of time. Sometimes it even becomes difficult to mark a line to differentiate between needed practice and defensive practice. The extent of defensive practice is based on judgments and arguments to do so as the grey area between needed and defensive practice is large.[7] Practice of defensive medicine is seen by some based on "Predator-Prey" model where litigious patient who seek compensation is taken as predator and physicians as their prey. The aim of predator is always to seek opportunity to attack the prey when the environment becomes feasible whereas the prey tries to avoid predator by the practice of defensive medicine. Defensive physicians are taken as "adapted preys" who have improved their fitness through mutations. Interaction between clinical risk, malpractice litigation and defensive medicine is complex. A complexity arises at time of increased clinical risk. Patient party may chose litigation against physicians and physicians may practice defensive medicine to prevent negligence charges. This "Defensive Medicine Game" is difficult to be justified.[6] Physicians are never in position in harming their patients. They are always bounded by ethics and code of conducts if no law to control them is also formulated. If legal system is co-operative towards physicians, they will always act on best interest of their patients and such complexity will change into simplicity. They do not hesitate to take risk even when there is little hope or availability of resources are limited at times of lack of better alternatives which may favour patient's survival. Medical law should be able to balance between acts of physicians and rights of citizens.[7] Law if cannot be made encouraging should not be discouraging for physicians so that the later can act tactfully with full confidence and ability for betterment of patients. Some countries like Sweden and New Zealand have opted the model of providing compensation to patients by government for preventable unexpected injuries and physicians are faced disciplinary action from their professional body if found guilty.[6]

CONCLUSIONS

Defensive medicine may be positive or negative for patients but it has become need of time for physicians. Though good communication, better care and good physician patient relationship is best defense but may not work always when finance interplay vital role at times of physical, psychological and economic loss on part of patient. Even the situation is made worse by third party who is involved in twisting the facts regarding disability or loss to grieved ones and get involved in professional vandalism. Clinical decision making and defensive climate both are influenced by legal, financial and cultural motives. Balance between them is must for best patient care. So the answer to the query whether the practice of defensive medicine is legitimate or immoral act cannot be generalized but is context specific.

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