

Review Article

The legal aspects faced by cosmetologists and dermatologists

Shobhit Mohan¹, Lalit Mohan^{2*}, Renu Sangal³, Neelu Singh⁴

¹Department of Dermatology, ^{1,3}Medical College, Basti, Uttar Pradesh, India

²Department of Dermatology, ^{2,4}Medical College, Gorakhpur, Uttar Pradesh, India

Received: 02 December 2019

Accepted: 01 February 2020

*Correspondence:

Dr. Lalit Mohan,

E-mail: lalitmohanbrd54@gmail.com

Copyright: © the author(s), publisher and licensee Medip Academy. This is an open-access article distributed under the terms of the Creative Commons Attribution Non-Commercial License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

ABSTRACT

The present day cosmetologists, in addition to conventional skin physicians, are also cosmetologists and minor skin surgeons in their practice. The cosmetic procedures have the risk of legal problems leaving an unsatisfied patient and troublesome law. One should have safe practice of cosmetology and possible complications and how to overcome these complications after cosmetology procedure. Doctor should know the routine precautions which help him to avoid unnecessary calls by the court.

Keywords: Cosmetic procedures, Informed consent, Legal aspects, Cosmetologists and dermatologists

INTRODUCTION

The demand for cosmetic procedures is ever increasing.¹ In the modern era, cosmetic procedures are a fancy, a fashion for some patients; it is their profession which compels them to undergo cosmetic procedures. This is supported by economic growth, high affordability, booming middle class with disposable incomes, revolution in the mass media and thereby increased awareness about cosmetic procedures.

There is desire to 'look good' that drives the patients to go into such cosmetic procedures. Treating dermatologists should not be over enthusiastic and should not come under high expectations of the patient. It always advisable to play safe. For any procedure, its variable results should be told to patients prior. Patients satisfaction and doctor's safety should be kept in mind as no doctor think to harm the patients. Nowadays, dermatologists are performing increasing number of cosmetic procedures which have the risk of going into complications.²

By following some simple routine precautions and careful handling of a "difficult patient", dermatologist can avoid unnecessary legal complications.³

Professional need-based clients demand good look like air-hostesses, actors, receptionist, market professionals, dancers etc. Look good feel clients who wish neat and clean look that matches their age. They seek treatment for their skin tags, moles, dermatosis papula nigra, Seborrheic keratosis, peels, fillers, botulinum toxin. Clients of special occasions who wish to look good on specific occasions, premarital female and male, close relatives of the bride and groom.

METHODS

Selection of patients

Choosing the right patient for a cosmetic procedure is the most crucial step. Whether the expectations of patient match the expected outcome from the procedures, possible complications should be explained to the patient

in details. It is the trust the patients have on the doctor. Counseling of the patient is must before procedure.

Basic understanding of characteristic feature and pre-operative interview questions are valuable to dermatologists and cosmetologists.⁴

It is better to avoid patient who have high expectations from the procedures and also those patients who got numerous procedures performed by many doctors and history of poor outcome by the previous doctors. Any history of legal proceedings or threats, violence with previous doctors.⁵

Doctors practicing corrective dermatology should have serious not profitable approach and they select patients carefully.⁶

Counseling

Adequate time should be giving to this step. Adult patient preferably accompanied by a friend of relative or parent in whom he /she has full faith in the doctor. Children below 18 year must be accompanied by parents or legal guardian. There is an opportunity for cosmetologist to understand the needs of the patient and also to buildup rapport. Cosmetologist explanations and patient's understanding to it has been shown to improve the patients compliance.⁷

Doctors should put all the options available to the patient and allow to choose. At this stage, important information like better or cheaper or more effective or safer procedures should be told to the patient. Detailed discussions about procedure is right way that wins the confidence of patients. Cosmetologist should discuss advantages, disadvantages and adverse effects and generally expected outcomes of the procedures chosen for patient. Patients responsibilities like post procedure care, fees charges should also be told. One should encourage the patient to clarify his doubts. This make the understanding for the patient to know his thinking and to avoid potentially dangerous patient. Choosing a right patient is an art of the doctor. A patient who has consulted many doctors for small issues and who lacks trust and who questions are never ending, best way is to avoid him.

Informed consent is important for legal as well as to improve quality of care and patient satisfaction.^{8,9} Presence of witness is always preferred while taking informed consent. It should include other conditions needed for treatment, other modalities of treatment, duration, number of sittings, expected results, needed to follow instructions before and after procedure and possible side effects. Consent should always be taken prior to the procedure and by the doctor only. It should be written in simple language which patient understands better, it should be signed by patient, parents or guardian in the case of minor. If patient is teen ager (13 to 18

years) better is to take consent of minor and parents. Consent forms also most protective where unpredictable outcomes come. It does not provide immunity for dermatologist from all guilts in case of adverse reaction occur.¹⁰

Patients expectations are higher and they are aware of the power of exercising their rights. Failure to obtain informed consent is one of common allegations in medical malpractice suits.¹¹

Pre-procedure work up

Routine investigations should be done in all patients including bleeding time, clotting time, completer blood counts, random blood sugar, electrocardiogram, pregnancy test in child bearing age and other relevant investigations on clinical finding, past history of any cosmetic procedure done is to be noted. This helps the doctor to assess the expectations and level of risk. History must include connective tissue disorder, diabetes and keloids. If required, biopsy must be taken prior. Patients should be asked for his jobs and profession like actors and approximate time taken in procedure. Drug intake history antiplatelets drugs and vitamin E capsule (Blood thinners), history of green tea which can lead to excessive bleeding, history of topical retinoid before a chemical peel, use of isotrenoin which affects wound healing. Evaluation of the cosmetic patients require a good lighting, assessment of skin type and photo ageing.¹⁰

Photograph should be taken from same distance with similar lighting and magnifications in hair transplantation, rhinoplasty etc.

Anti-viral or antibiotic prophylaxis is must for cases of herpes. It is safer to give anti-viral prophylaxis. A test dose of lignocaine is recommended if it is to be used in procedure. Cosmetologists must well skilled for procedures. These skills are acquired by workshop, certified courses and hands on training. High quality training procedures, knowledge of possible complication and ability to address them properly with informed consent including photo documentations form the frame work of good practice.⁶

Standard of care practiced by dermatologists should be based on current evidence available.¹²

Aspectic and universal precautions should be taken, guidelines of sterilizations should be followed. One should be prepared for anaphylactic reactions, vasovagal, syncope etc. Talking to the patient remains vital during the procedure as patient is conscious throughout.

A qualified assistant or nurse referred to as 'physician extenders, when adequately trained, they prove handy in the present day busy schedule of most practionners.¹³

Physician extenders play direct role in dermatological care. Promoting patient safety through physician extenders supervisions and reporting of patients outcomes are highly needed.¹⁴

Medical record documentations is important. Operations notes should list all the steps and materials used for procedure with date, time, signature of the doctor or team. It is considered as important evidence in the court of law.

Post procedure care and patient workup should be complete. Documentations of advice are important over verbal instructions. Physicians should take great care to ensure complete and accurate records.¹⁵

“Downtime” of cosmetic procedure should be told during counseling itself. Patients should be asked to report if any unusual or unexpected events occur. The doctors should be available for contact for the early diagnosis and management of probable complications.¹⁶ Follow up visits should be told to comply.

What to do when something goes wrong

Even the most experienced and skilled dermatologists can have a bad day. Mistakes do happen even with the best hands. It is better to avoid patient going to courts. Try to make an out of court settlement if doctor defence is weak. This saves doctors reputation as well as economic loss due to time spent in attending to court house.¹⁶

In India, patients have an easy method of litigations as it is under the Consumer protection act, 1986.

Supreme court ruled in 1995 that doctors could be sued in India's consumer courts for any service charged by doctor. Only hospitals giving free services are exempted. A complaint can be filed in district forum if the value of the services and compensation claimed is less than 20 lakhs rupees; state commission if the value of the goods or services and the compensation claimed does not exceed more than 1 crore; in national commission, if the value of goods or services and compensation exceed more than 1 crore.

An aggrieved patient can approach the consumer forum with the complaint of medical negligence within a period of 2 years from the date of cause of action. Once complaint is filed, it will be put before it. If it is so, it issues a notice to doctors who are required to reply within 30 days. This is called as written statement or version of the opposite party. The complainant is then allowed to file a rejoinder. Cross examination is permitted in appropriate cases and affidavits can be filed. Whenever necessary the forum may summon an expert to give evidence. It is always advisable to seek the advice of legal adviser.¹⁷

A proper legal reply from the doctor side can alleviate the need to visit the courthouse, in case patient has the intention of mere monetary gain.

What makes the patient take a legal action- It is not always actual surgical outcome that makes the patient sue the doctor. Patient-doctor relationship is most important factor in deciding whether patient will go to court. A patient is more likely to sue if patient perceives that his doctor is lacking sympathy and communication skills. Procedures are not performed properly, negligence on the part of doctor etc. are the reasons for the patient suing the doctor.

SAVE YOUR SKIN

As long as doctor is doing his duty properly, he should not worry. The approach of the physician in dealing with the patient often determines whether post operative problems are perceived by the patient as unfortunate complication or error by the physicians. An open trustful and caring approach by physician can avoid unnecessary trips to the courts. Poor communications, economic gains and negligence are primary reasons that patient sue their physician. Doctor should do their level best to minimize the damages.

Cosmetic patients sue doctors over hyperpigmentation and scarring. Selection of right patient, good counselling, informed consent, sound knowledge of procedures proper priming before peel, ensuring patient compliance for post procedure care and follow up are the key points. Care should be taken to see that remedy should not be worse than disease the patient had. Do not over promise the patient. Always promise less and deliver more.

CONCLUSION

Dermatologist should be aware of local laws with registration of the clinic, toilet facility, drinking water supply, waste management, medical record maintenance taxes to be paid properly.

Aim of the article was to sensitize the cosmetologist about the legal issue in the practice. It is recommended to avail professionally indemnity to cover the risk of allegations of medical negligence and its consequences.

Funding: No funding sources

Conflict of interest: None declared

Ethical approval: Not required

REFERENCES

1. Alcalay J. Dermatology: A medical, surgical and aesthetic profession. *Isr Med Assoc J.* 2008;10:404-5.
2. Ratushny V, Allen H. The effect of medical malpractice on dermatology and related specialties. *J Med Sci Res.* 2007;1:15.

3. Sacchidanand SA, Bhat S. Safe practice of cosmetic dermatology: avoiding legal tangles. *J Cutan Aesthet Surg.* 2012;5(3):170-5.
4. Malick F, Howard J, Koo J. Understanding the psychology of the cosmetic patients. *Dermatol Ther.* 2008;21:47-53.
5. Castle DJ, Honigman RJ, Phillips KA. Does cosmetic surgery improve psychosocial wellbeing? *Med J Aust.* 2002;176:601-4.
6. Situm M, Buljan M. How to protect medical professionals from unrealistic expectations of clients in corrective dermatology? *Acta Clin Croat.* 2010;49:509-13.
7. Hamasaki T, Takehara T, Hagihara A. Physicians' communication skills with patients and legal liability in decided medical malpractice litigation cases in Japan. *BMC Fam Pract.* 2008;9:43.
8. Goldberg DJ. Legal issues in dermatology: Informed consent, complications and medical malpractice. *Semin Cutan Med Surg.* 2007;26:2-5.
9. Brezis M, Israel S, Weinstein-Birenshtock A, Pogoda P, Sharon A, Tauber R. Quality of informed consent for invasive procedures. *Int J Qual Health Care.* 2008;20:352-7.
10. Alum M, Gladstone BH, Tung R, editors. *Cosmetic dermatology: Requisites in dermatology series.* Edinbergh: Elseviers Publishers; 2009: 3.
11. Rathor MY, Rani MF, Shah AM, Akter SF. Informed consent: A socio-legal study. *Med J Malaysia.* 2011;66:423-8.
12. Gittler G, Goldstein EJ. The standard of care is not so standard. *Clin Infect Dis.* 1997;24:254-7.
13. Leshin B, Hauser D. The role of a physician assistant in dermatologic surgery. *Dermatol Surg.* 1999;25:148-50.
14. Tierney EP, Hanke CW, Kimball AB. Practice models and roles of physician extenders in dermatologic surgery. *Dermatol Surg.* 2011;37:677-83.
15. Arndt M. Physician's errors-legal advice for physicians accused of malpractice. *MMW Fortschr Med.* 2004;146:25-9.
16. Hagihara A, Hamasaki T, Abe T. Association between physician explanatory behaviors and substandard care in adjudicated cases in Japan. *Int J Gen Med.* 2011;4:289-97.
17. Sirur SP. Consumer courts. *Indian J Dermatol Venereol Leprol.* 2004;70:52-3.

Cite this article as: Mohan S, Mohan L, Sangal R, Singh N. The legal aspects faced by cosmetologists and dermatologists. *Int J Res Dermatol* 2020;6:275-8.