



medical negligence

Insurance issues

when the insurer is the opposite party

Make

- Make insurer pay always, because the insurer is in business only for making payment

Do not begin

- Do not begin an enquiry without seeking a disclosure of pre-litigation communications

Check

- Check for extent insurance cover and the amount claimed by the claimant

Suggest

- If the gap is narrow, suggest a settlement amount or ask if they want a referral to a mediator

See

- If the gap is large, see if either of the parties will be able to scale up or scale down the claim to bridge the cap

Areas that require strict application of professional negligence

Insensitive to poverty stricken patient

situation that exposes a patient to greater economic loss

failure to insure against medical negligence and exposing the claimant risk of inability to recover damages

false assurances

administration of contaminated medicine

situations where medical negligence need not be inferred



DIAGNOSTIC ERRORS WHERE
DIFFERENT DIAGNOSIS IS POSSIBLE



WHERE COMPLAINANT RELIES ON
AN ALLEGED PROMISE OF
ABSOLUTE CURE



DOCTOR WHO IS AN INTERMEDIARY
BETWEEN PATIENT AND DEFECTIVE
PRODUCT

Leading decisions on deficiency of service



IMA v Shanta - settling the contours of law of deficiency of service



Spring Meadows Hospital and another v Ahluwalia -
Introducing concept of compensation to secondary victim



Murghesh K.Parikh v Dr Mayur Mehta - Failure to provide details of treatment



Dr. JJ Merchant v Shrinath Chaturvedi - Complicated questions of fact and law

insurance issues

- The need for consumer protection on account of gross imbalance of power on account of lack of transparency, use of obtrusive language, entry and exit costs are low
- Compulsory insurance requirements, products tied up with loans and insurance linked to income tax
- Problems confronted by public: repudiation of claims, dispute in quantum, part settlement of claims, non issuance of policy



Appropriate posturing

- As with issue of *Uberima Feides* for insured, want of good faith defence for insurer
 - *Harvey v GEICO; USAA Texas Lloyds Co v Menchaca*
- Applying tactics to extract settlement from insurer
- Contractual limit of liability to be uncapped in case of lack of good faith
- Consumer education
- Duty to renew policy of health insurance - *New India Assurance Co Ltd v. Satpal Singh Muchal*
- Contracting illness during the subsistence of the policy is no ground to deny renewal *United India Insurance Co Ltd v. Manubhai Dharmasinhbhai Gajera*
- Even the past conduct of an insured lodging a case against an insurer cannot be a reason for denying renewal- *New India Assurance Co Ltd v. Satpal Singh Muchal*

IRDA Regulations

- Insurance Regulatory and Development Authority (Protection of Policy-holders' Interests) Regulations, 2002, thus: ... 'proposal form' means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted; Explanation.—'Material' for the purpose of these Regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer.

Mediation as a tool

understanding
the concept of
mediation

the stage when
the technique is
ideally
attempted

parties to
mediation

when mediation
fails

when mediation
succeeds