Medical Negligence is the central concept on which in >95% cases doctors are hooked in civil and criminal liabilities, heavy compensations and hanging sword of imprisonment. Let’s first define Medical Negligence:

Medical Negligence is defined as

a. Want of reasonable degree of care or Willful neglect, on part of a doctor
b. With whom, there is an established Doctor-Patient (DP) relationship and
c. The alleged act of Negligence can be either in the form of *res ipsa loquittor* i.e. facts of the case speak for themselves—no further proof is required to make allegations OR Subtle—i.e. a lot of scope is there for deliberations to defy the charges, which in turn can be Act of Omission or Act of Commission—e.g. Not doing biopsy before radical mastectomy in a case of Ca-breast—not doing biopsy would be act of omission and doing mastectomy without biopsy would be act of commission which other prudent doctors would not do.

AND
d. Nexus between the alleged act of negligence and resulting damage (to the patient—physical/mental/economic/reputation/emotions). It has to be the basic cause of damage and not the remotest or imaginary.

Unless all the 4 components are fulfilled, the definition of Medical Negligence is incomplete and hence doctor will be exonerated if the 4 elements are not fulfilled.

Examples of Gross negligence of *res ipsa loquitto*—(fortunately rare)—wrong identification of patient leading to wrong surgery on him; Amputating wrong limb, Leaving foreign body inside during laparotomy; Not doing test dose in a potentially anaphylactogenic drug and so on.

Burden of proving negligence is on the patient (allege) but in *res ipsa loquitto* and in cases where there is no free access to patient like OT, ICUs, Labor rooms etc, the burden shifts to doctor i.e. he has to prove his non-negligence (prove diligence).

Every sore end result like death or permanent disability is not the same as Medical Negligence.

To minimize chances of litigation, following acronym is important to remember and follow:

A—> Attention (to patient complaints) and Additional (timely) opinion

B—> Behavior of the (doctor and staff); Bills (give a fair estimate in planned cases).

C—> Communication; Consent; Compassion
Documents (the only friends in case of medico-legal crisis and worst foes if not there)

Empathy (towards the patient suffering); Efficiency and Equipment

Good Faith (S.52 of IPC)—have proper registration, updating, registration of nursing homes, BMW etc.

Indemnity Insurance coverage for individual and hospital etc. of adequate amount coverage

Following are non-negligence:

1. Difference of opinion
2. Wrong result despite diligence and scientific (evidence based) treatment
3. Following one of the standard lines of treatment for the same disease
4. Bills
5. MISTAKE OR MISADVENTURE
6. INHERENT RISK IN MANAGEMENT
7. ACTS DONE IN GOOD FAITH
8. ACCIDENT
9. Period Of LIMITATON—usually from date of discharge (Oct 2007-NC-Saroj Chandoke vs Sir Gangaram) 2 yrs in Consumer; 3 yrs in Civil—no limitation for criminal liability
10. CONTRIBUTORY NEGLIGENCE—can save the doctor
11. ERROR OF JUDGEMENT if NOT GROSS or palpable

Deficiency→ Consumer Act 1986 has brought concept of Deficiency (S.2d(g)) which has wider connotation than crystallized definition of Medical Negligence. Whatever services are promised like food, laundry, air conditioning, availability of assured consultants, appointments etc are covered under this—but by and large, as of today, the cases revolve around proving Medical Negligence

(Wherever, the word “doctor” is there, please use it inter-changeably with hospital or medical establishments)

The highest compensation awarded is against AMRI hospital in Kolkata—11.5 crores!(in 2014)

We strongly suggest individual coverage of 1 crore for operating surgeons, 2 cr for super-specialists, 50 lacs for non-operating medical consultants, and similar amounts for hospitals. Also, Family practitioners should insure for 10 lacs.