# Medicine and Society

## Defensive medicine: Sword of Damocles

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**ABSTRACT**

**Defensive medicine is the deliberate departure by doctors from standard operating procedures with a view to safeguard themselves against possible medical malpractice litigation. It is on the rise in both developed and developing nations and across all fields of medicine. Different aspects of this practice are evident and many new are unfolding by the day. It is silently encroaching on the healthcare systems and could be detrimental for patients, doctors and healthcare systems. We probe the determinants of defensive medicine, the possible implications and the recommendations for addressing it.**

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### INTRODUCTION

There is an ongoing debate on merits and demerits of 'defensive medicine'. The protagonists and antagonists compete with one another in propagating their own perspectives. Is the medical profession losing its well-entrenched credibility, patient confidence and professional integrity by indulging in a practice that is derided by some as unethical, avaricious, cowardly and termed as defensive medicine? Is the practice actually cowardly, imprudent and unethical; or is it rational and desirable under coercive circumstances such as a legal threat?

### DEFINITION

Briefly, defensive medicine is a deliberate departure by physicians from standard operating procedures with a view to safeguard themselves against possible medical malpractice litigation. Defensive medicine involves physicians prescribing investigations, procedures, referrals or other evasive steps to protect themselves from legal liability under torts medical malpractice.[1–3] Defensive medicine can be an act of commission or omission. It can range from prescribing non-essential investigations, uncalled for referrals to specialists, performing unwarranted procedures, hospitalization (commission), to not admitting high-risk patients or not performing complex procedures (omission).[1]

### BURDEN

The practice of defensive medicine is prevalent at almost all levels of healthcare globally.[4] Every field in medicine is vulnerable to the practice of defensive medicine. There has been a decline in the rates of vaginal deliveries and a rise in deliveries through caesarean section.[5,6] Irrational use of antibiotics is contributing to antibiotic resistance.[7] The past experiences of being sued and penalized are associated with a more defensive behaviour on the part of physicians and surgeons.[8] Many physicians tend to avoid critically ill patients, patients with prior complications, and suspect litigants, fearing malpractice allegations against them.[6,9]

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### DETERMINANTS OF DEFENSIVE MEDICINE

Since 1957, the Bolam test has been used to assess the practice of negligence. It states: 'A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. Putting it another way round, a doctor is not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view.' Physicians are expected to provide a minimum standard of care based on relevant guidelines developed by medical associations or institutes. In case of failure to maintain these minimum standards, the defaulter exposes oneself to charges of negligence. Failure to correctly diagnose and provide proper treatment, failure to warn the patient of known risks, poor post-treatment medical care and even inadvertent negligence during medical procedures—all these have been judged as categories of medical malpractice. The fear of litigation is the primary reason that prompts physicians to err on the side of caution and indulge in defensive medicine. Alleged medical negligence or malpractice, if proved, entitles the aggrieved party to secure hefty financial compensations from the perpetrator(s) or has other penal implications. The cause of action arises from the law of torts that facilitates claims to huge financial compensations for damages of any kind. Law of torts is well established in developed countries and other countries are following suit. As a result, even at the cost of being practical and using some common sense, physicians succumb to defensive medicine.[4,9] Physicians' desire to meet patients' expectations and avoid conflict are other contributory factors for defensive medicine. Of course, monetary considerations and vested interests involving greed and avarice may sometimes contribute to this phenomenon.

Advancements in diagnosis and treatment technologies make accurate detection of various diseases possible and reliable. However, sometimes, these investigations are used to appease a demanding patient, bolster the doctor's self-confidence and create documentary court evidence.[4] The protagonists believe that excessive investigations/procedures would stand a better chance than skipped ones at a court of law examining a case of medical malpractice.

Instances of violence against doctors by attendants of patients are becoming increasingly common these days. A study done by the Indian Medical Association showed that over 75% of doctors had faced violence at work.[10] In 2014, in Mansa district of Punjab, a doctor's clinic was burnt following death of a boy who was referred to a tertiary hospital but died.[11] Over the past few years, several such episodes of violence have been observed in many parts of India and are making medical professionals adopt a very cautious approach.

## IMPLICATIONS

Defensive medicine is expensive and has health and other risks. The harm might be in the form of physical trauma, mental trauma or radiation exposure.[12,13] Unnecessary investigations may also be associated with 'false-positive' results. Such ambiguous and faulty findings may result in distress of various kinds and necessitate further hazardous procedures. The financial burden due to defensive medicine is very high on the healthcare system as well. It is estimated in a few surveys that this cost may be from 3% to up to 40% of the healthcare costs in western countries.[9,14,15]

## RECOMMENDATIONS TO DISCOURAGE DEFENSIVE MEDICINE

- Introduce patient–attendant communication as a component in undergraduate and postgraduate medical curriculum. Similarly, medical ethics should be made a compulsory subject.
- Teach all medical students the art of counselling patients and relatives in favourable and unfavourable circumstances.
- Appoint professional counsellors in emergency and critical care units, where doctors have limited time to communicate to relatives about potential adverse patient outcomes.
- Introduce 'Quaternary prevention', which states-—first, do not harm. It encompasses the need for close scrutiny by doctors themselves, a sort of permanent quality control on behalf of the perception of the harm they may do, even if unintentionally, to patients.[16]
- Evolve clinical, evidence-based guidelines with global application and acceptability, modified as per regional/local requirements. This would avoid subjectivity in interpretation and enable physicians to practice evidence-based medicine.
- Emphasize the importance of proper documentation and record keeping, which have been proven time and again to help doctors prove their competency and disprove negligent behaviour. The role of complete prescriptions and written informed consent cannot be overemphasized.
- Enact laws concerning defensive medicine to encourage the practice of reasonable, rational medicine and in consonance with the real situation. Physicians need to be protected by creating conditions that facilitate independent decision-making, without fear of uncalled for litigation. For physicians, it is a 'catch 22' situation. While the law induces them to act extra cautiously, they get castigated when they do so! The remedy lies in the cause itself. It cannot be ignored that there are doctors who resort to unfair means for personal greed. Such doctors set a bad example and degrade the profession. They should be taken to task through appropriate legal actions. Blatant acts of negligence, intransigence and avarice need to be curtailed and penalized heavily.
- Enact stricter laws for security of doctors against actions of patients' relatives who take to violence as a weapon to vent out their feeling of loss.

## CONCLUSION

Physicians need protection from fear, and a boost of confidence for independent decision-making. The sword of litigation hanging over their heads needs to be removed, with the understanding that medical science is an ever-evolving field, subject to modifications in patient care and undesired outcomes are bound to occur and will continue to occur, despite best efforts of medical professionals.

*Conflicts of interest.* None declared

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