

National Seminar for Presidents/Members of District Forum

Presented by

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**Medical Negligence
and
The Consumer Protection
Act, 1986
- Legal Perspective**



11/03/2017

**National Judicial Academy
Bhopal**

Health Care Consumerism- A Huge Shift

- A huge shift from current doctor-driven care to “Consumer-Driven Health care”
- Patients are making health care decisions along with their doctors.
- e.g. Digital health trackers and health apps
- WhatsApp

NLSIU, Bnglr - Recent Survey

Pinpointed 4 reasons:
for rise in MN

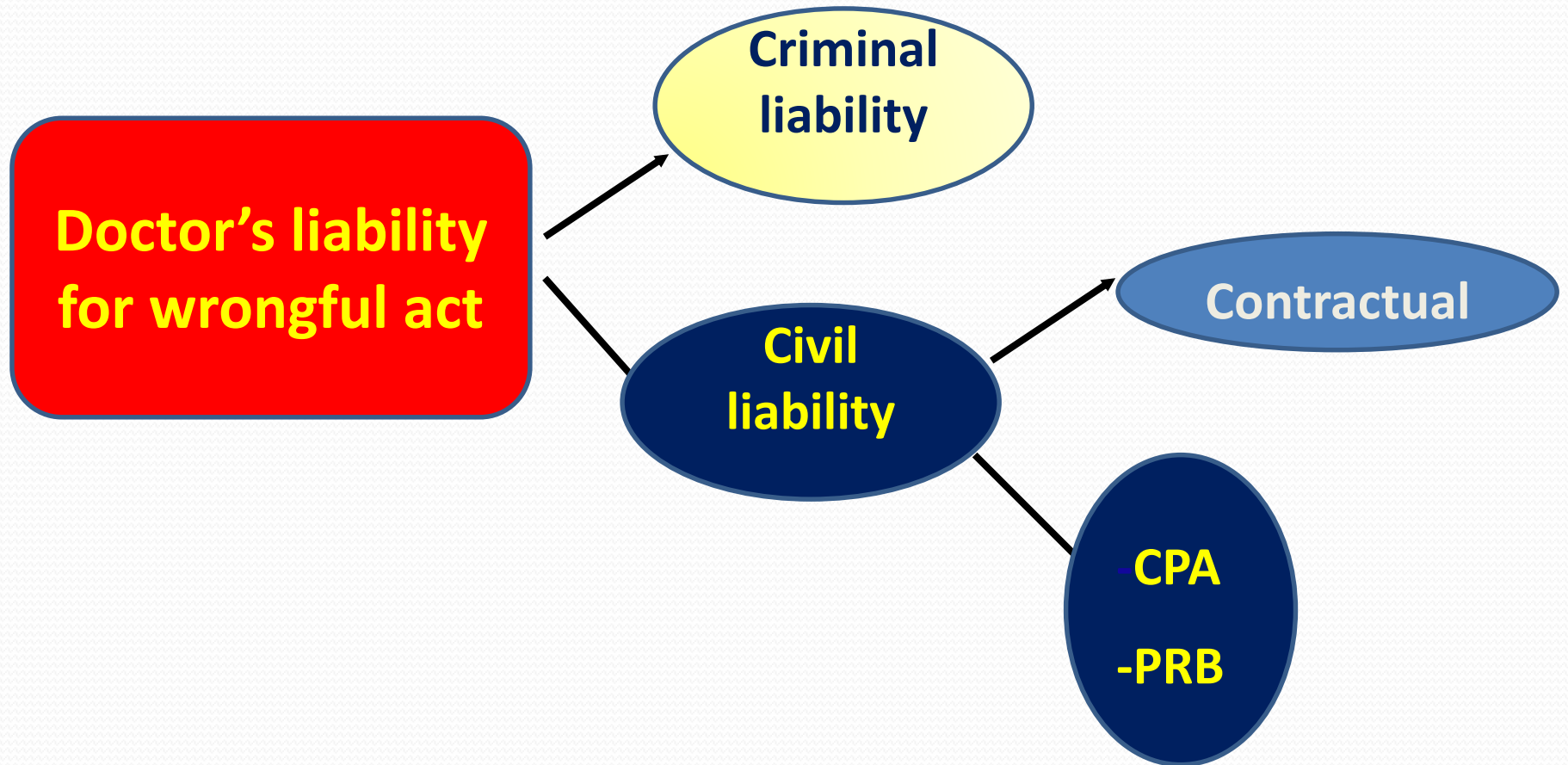
- * greater consumer awareness
- * flexible consumer forums
- * cost involved in medical services
- * litigant mind-set among the population in general

Present Scenario in India

"Every year, about 5.2 million people die due to human errors in India".

- a sharp rise in cases of medical negligence +
- cases of violence against doctors and hospitals.
- Indicates a *systemic failure* &
- *Breakdown of trust* –D-P Relationship

**Negligence =
Act of Omission/ Act of Commission**



{LB Joshi v Tr Godbole 1969 AIR 128}

Most Common Errors

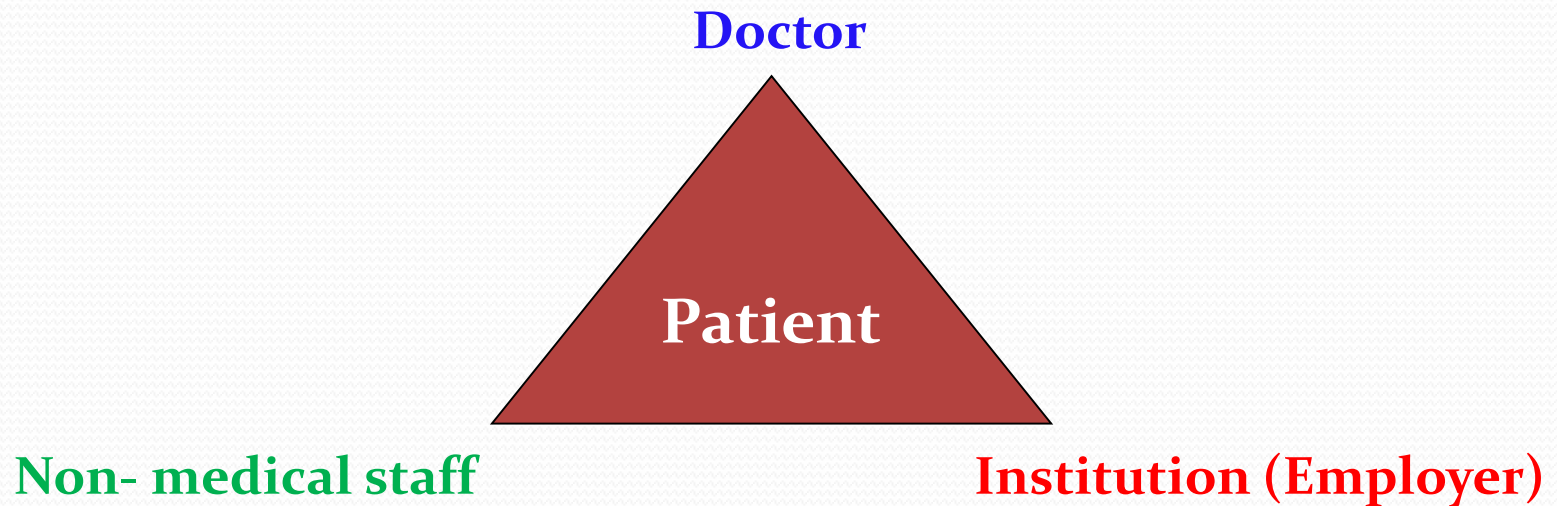
- Failed Diagnosis or Prognosis of disease
- Missing Pathology / Failed Surgery
- Inadequate/Lack of Communication
- Lack/Poor Medical Records
- Poor D-P Relationship
- Pressurized hospital Set up
- Lack of legal knowledge

Negligence – if 4 D's Proved

To succeed the Claim: C/o has to prove 4 "*D*"s

1. **Duty** towards patient
2. **Deficiency** in duty (breach)
3. **Directly** results- injury (causa causans)
4. **Damage** which may be physical, mental or financial loss to patient or relatives.

Liability in Medical Negligence



Liability

Contract OF Service

Vicarious

(Employee-employer contract)

Contract FOR Service

Independent

(Contractor- Client Contract)

Concept of Informed Consent

- **Signature on dotted lines...!!!**
- “ Patient’s signature goes a long way toward mitigating the legal problems of the doctor.”
- **make sure that the consent was informed.**
- **Degree of disclosure**
 - Reasonable disclosure
 - Adequate disclosure
 - Complete disclosure

Informed Consent {*BRAND*}

- **B**enefits of treatment
- **R**isks of treatment
- **A**lternatives (other treatment options)
- **N**o treatment (risks of)
- **D**ocumentation + signature
(patient, doctor, independent witness)

Interesting Cases

- Post # POP complications
- Mal- Union/Non-Union
- Wrong X-ray reading
- SP Nailing
- Gangrene
- Meniscus tear
- Deformity
- Infections
- Arthritis – Rh/Inf
- Joint Replacements
- Implants- Cobalt Toxicity
- Arthroscopy
- Other methods of treatment- Herbal/ Ilizarov Correction
- Tumours/Spinal Surgery



Dr's are Confused About Medical Record



- What/Why it is ?
- How to Prepare, maintain, & destroy?
- Whose property it is?
- How to reconstruct lost or damaged MR

MCI Regulation 2002

1.3 : Maintenance of Medical Records:

- Section 1.3.1 - 3 years from commencement of treatment (IP).
- Section 1.3.2- issued within 72 hours to patient or authorized attendant

CF needs - Medical Record

OPD/IPD

Referral Note

Discharge Note

Confidential

Correcting MR

Tampering

Destruction

Indoor Medical Record

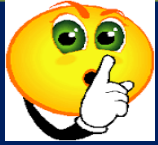
- Initial and Daily Progress notes
- Prescriptions, Investigation reports
- OT notes & Transfer note
- Abbreviations (**SCOOR/ OS-OD / BCVA**)
- Receipt of documents handed to patient

Referral Note

- Should include: Date- Time of issue
- Condition of patient
- Cause for reference
- Treatment given

Discharge Note

- **Must be issued & Issue ONCE only**
- It is a Mirror image of case sheet
- ?? DOA - DOD - Sequence of Surgical events - Imp during litigation.
- Brief- Investigation-Opr procedure -**Details**
- Instructions to patient, if not mentioned then liable e.g removal of stents-urology
- Copy must be preserved helps in cases of AMA discharge



Check Tampering

- Adding to an existing record
- Placing inaccurate information into the record
- Omitting significant information
- Tampering the Date
- Rewriting the record
- Destroying MR & Adding to others

Get a Second Opinion

- Having a “second pair of eyes and ears”

Referring a patient or Seek second opinion - is not a negligence

Good MR: Good defense

Poor MR : Poor defense

No MR : No defense



Check 6 C for Good MR

Client/Pt's
words

Clarity

Completeness

Conciseness

Chronological

Confidentiality

Court Expects

Neat ,Legible, Timely &
Accurate MR

with Professional tone.

SOP/Protocols -Admissibile

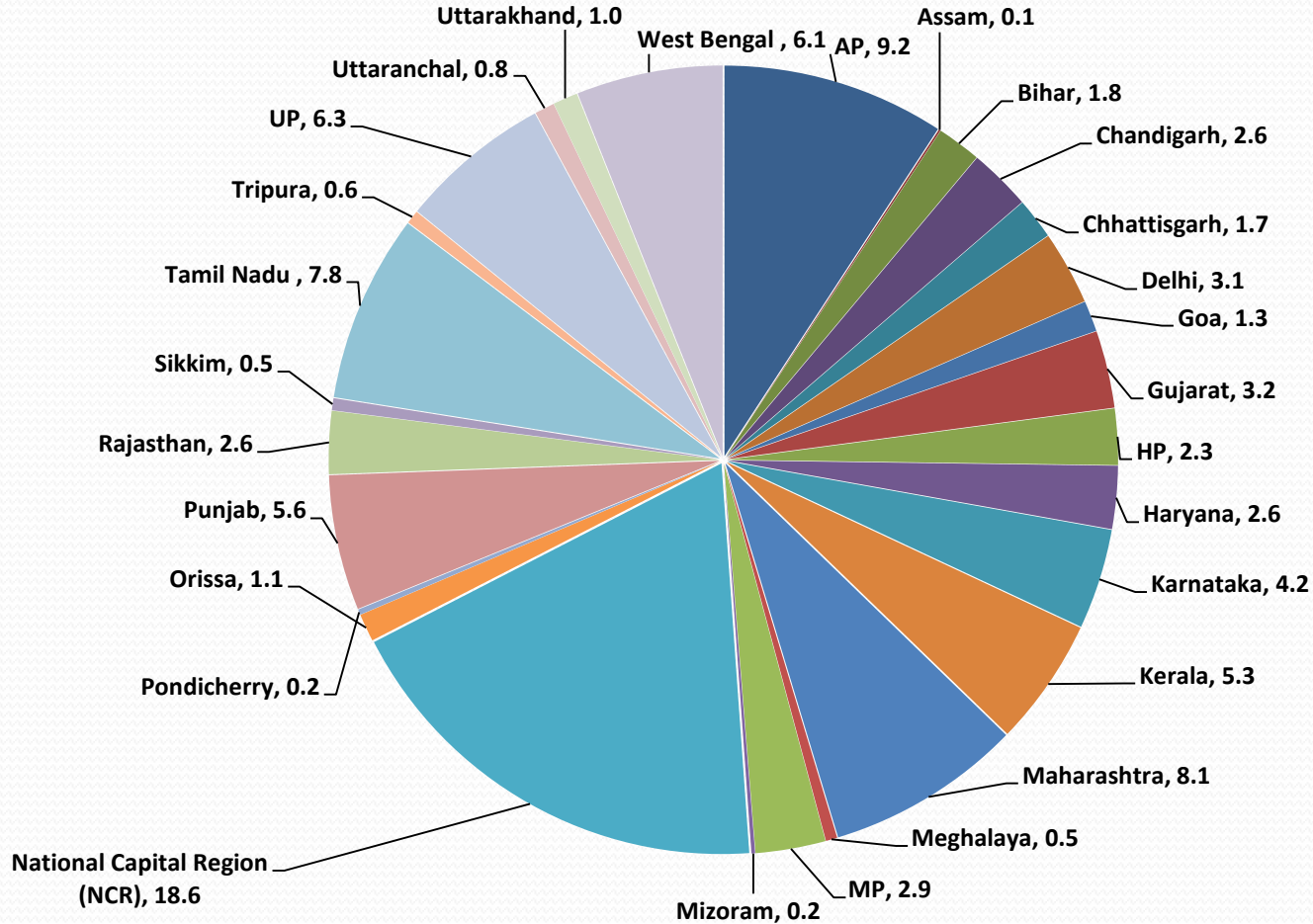
- Develop SOPs/Protocols in consultation with appropriate authorities/ Medical Associations
- Evolving Standard Pro-forma for various procedures.
- Write limitation of your procedure/result

Professional Jurisdiction

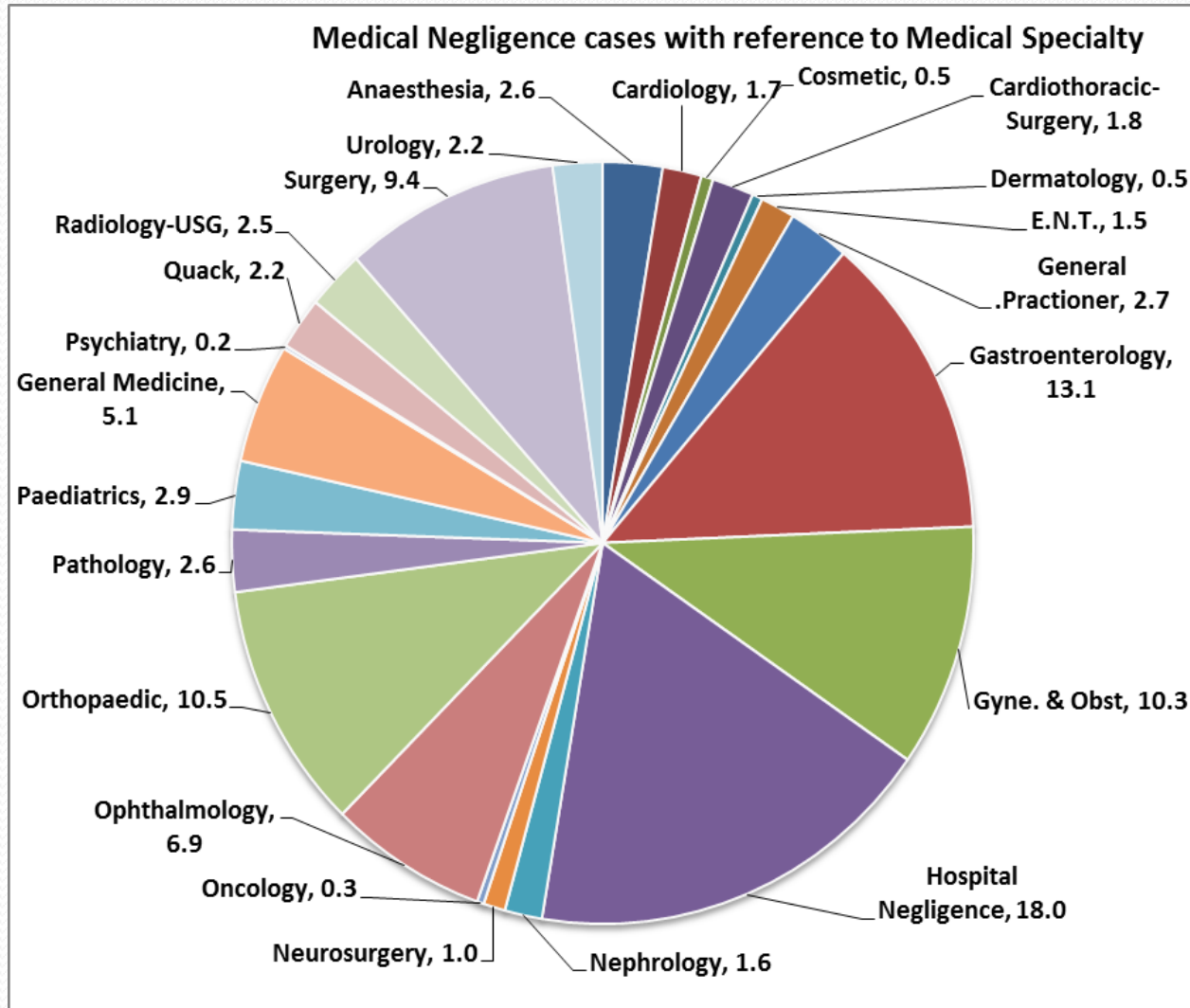
- Cataract Surgery
- Anesthetist / Ophthalmologist
- OB-Gynec /Paediatrics /Ophthalmologist
- Treatment of Diabetes/HT
- ENT/ Ophthalmologist
- Vicarious liability- Contract *of/for* Service

State wise MN Cases

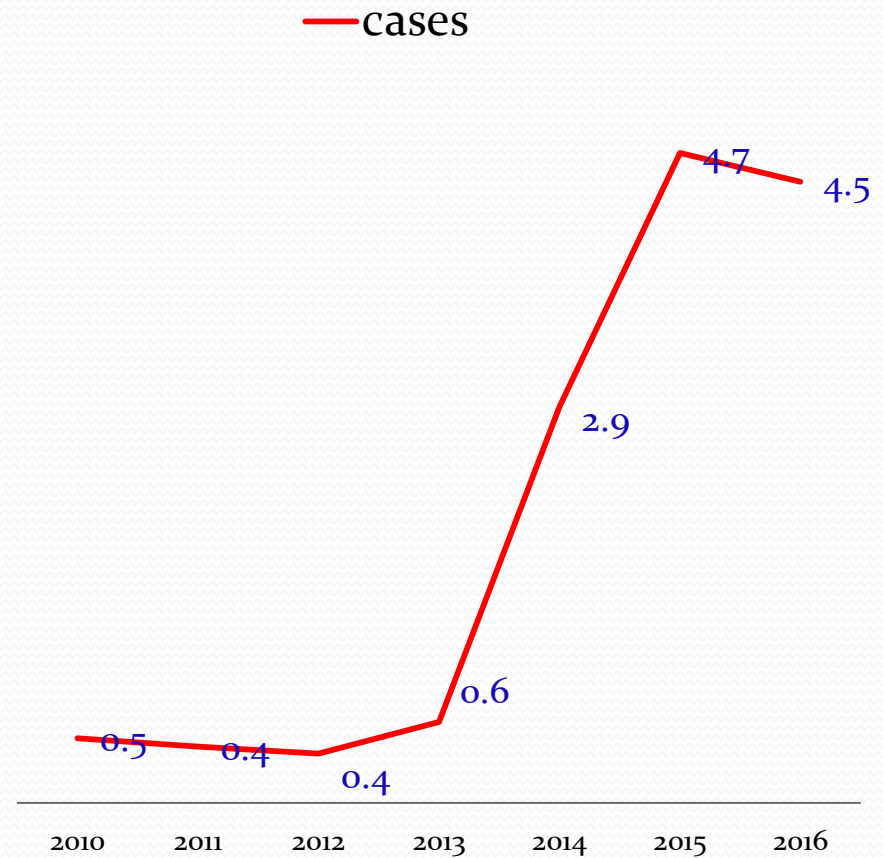
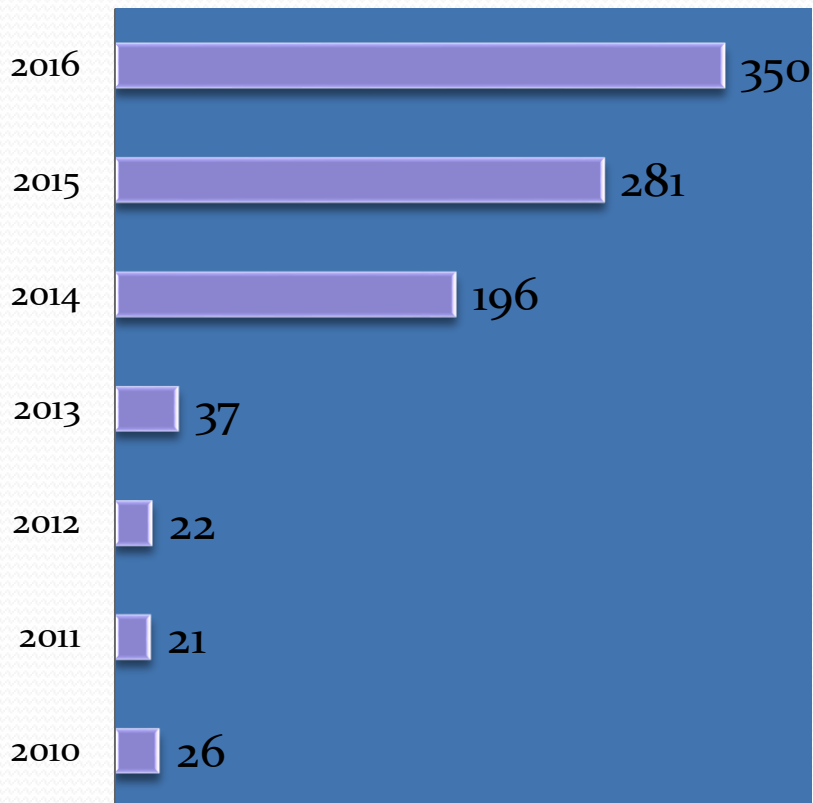
State wise Medical Negligence Cases Filed (in %)



Medical Specilaitywise MN



Rising Trend of MN (2010 - 2016)





Thank you

