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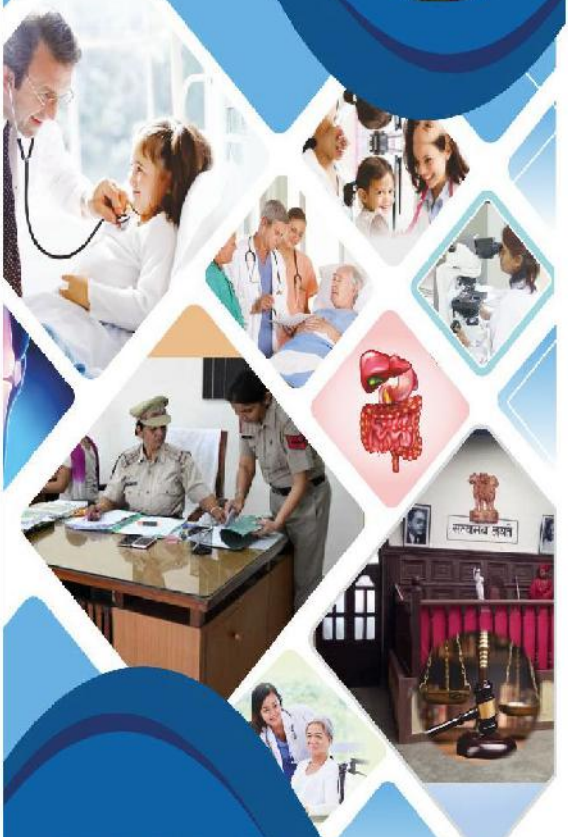

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Journal of Indian Medico Legal And Ethics Association

Vol.11 I Issue : 03 I July - Sept. 2023

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Editorial :

Are Doctors getting further trapped by New Code of Conduct of NMC

* Mahesh Baldwa **Varsha Baldwa ***Namita Padvi ****Sushila Baldwa

Received for publication : 12th August 2023 Peer review : 24th August 2023 Accepted for publication : 30th August 2023

Keywords :

National Medical Commission, Code of Conduct, Guidelines, Registered Medical Practitioner, Generic Medicine

Introduction :

Before studying Regulations relating to Professional Conduct of Registered Medical Practitioners, let one understand what 11 guidelines and five levels of penalties are which comes inbuilt in it.

Guidelines-1 - Generic medicine and prescription guidelines

Guidelines-2 - Template may be used for writing prescriptions rationally

Guidelines-4 - Guidelines on Penalties- L1, L2, L3, L4, L5- Level 1: Reformation, Level 2: Doctor in causing direct harm not proved-This penalty may be awarded even when the role of the doctor in causing direct harm was not conclusively proved but the doctor was found to have breached any of the codes. Suspension of the license-up to one month (30 days), Level 3: Doctor in causing direct harm proved -This penalty may be awarded when the role of the doctor in causing direct harm was conclusively proved and the doctor was found to have breached relevant regulation. Suspension of the license- maximum period of three months, Level 4: Doctor in causing direct harm proved beyond doubt-This penalty may be awarded when the role of the doctor in causing direct harm was conclusively proved and the doctor was found to have breached relevant regulations. Suspension of the license-for a period ranging from 3 months to 3 years. At each of Levels 2, 3, and 4, the extent of action recommended may range from reformation alone to a maximum of suspension for the period indicated at the level, depending on the quantum of responsibility of the RMP for the harm/injury caused, Level 5: The last resort is to debar a member permanently from practice (Permanent suspension of license). This will be taken as a 'unique case' and no precedent will need to be cited.

Guideline-5 - Guidelines on informed consent in clinical practice

Guideline-6 - Conduct of RMPs on social media

Guideline-7- Form of certificate recommended for leave or extension or communication of leave and for fitness

Guideline-8- Format for medical record-(See regulation 13)

Guideline-9- List of certificates, reports, notifications etc. issued by doctors for the purposes of various acts/administrative requirements

Guideline-10- Continuous Professional Development Guidelines

Guideline-11- Guidelines for Practice of Telemedicine in India enabling Registered Medical Practitioners to provide Healthcare using Telemedicine

Ethics and Medical Registration Board of National Medical Commission notified on 2nd August. 2023 and rolled back on 23-08-2023.. Regulations relating to Professional Conduct of Registered Medical Practitioners, So, currently RMP has to follow old 2002 code of ethics. But sooner or later rolled back NMC code of conduct shall be brought in. The two reasons for rolling back were dispute over

1. prescribing generic medicines and
2. sponsorship of conferences by pharma

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1. **Professional Conduct of RMPs-** Regulations relating to Professional Conduct of Registered Medical Practitioners
2. **Duties and responsibilities of the Registered Medical Practitioners** are enumerated here
3. **Suffix and Modern Medicine**

a. **Displaying the unique registration number-** RMP's signatures should be followed unique registration number. (L1). (Guideline for prescription)

b. **Display as suffix NMC recognized degrees/diplomas -** The RMP shall display as suffix to his/her name only NMC recognized and accredited medical degrees/diplomas

c. **Shall not claim to be a clinical specialist -** RMP shall not claim to be a clinical specialist unless he/she has NMC recognized training and qualification in that specific branch of modern medicine

d. **Practice modern system of medicine -** Every RMP shall practice modern medicine or allopathic medicine and shall not associate professionally with any unqualified person to perform any treatment, procedure, or operation.(L2)

e. **Not to employ unregistered healthcare professionals-** RMP shall not employ in connection with his/her professional practice any healthcare professional who is neither registered nor trained under the relevant Medical Acts.(L2).

4. **Continuing Professional Development Program:** A RMP should attend continuing professional development programs regularly each year, totaling at least 30 credit hours every five years. (CPD guidelines)(L2).
5. **RMPs will be licensed to practice** in the states after payment of requisite fee in States and their names will appear on state medical register.(L2)
6. **Right to remuneration of RMP:** Consultation fees should be made known to the patient before examination or treatment of the patient. At the same time this does not apply to doctors in government service or emergencies but the doctor must ensure that the patient is not abandoned. (L1)
7. **Prohibiting Soliciting of Patients:** RMP shall not solicit patients directly or indirectly or as a part of the group of RMPs, or institutions or organizations or hospitals or nursing homes, or corporate hospitals. (L2)
8. **Prescribing Generic Medicines:** Every RMP should prescribe drugs using generic names written legibly and prescribe drugs rationally, avoiding unnecessary medications and irrational fixed-dose combination tablets. (L1 and/or L2)(Generic Drugs and Prescription guidelines). One of reasons for rolling back of NMC code of conduct was dispute over prescribing generic medicines.
9. **Prohibition of Fee Splitting/Commissions:** A RMP shall not directly or indirectly participate in any act of division, transfer, assignment, subordination, rebating, splitting, or refunding of any fee for diagnostic, scanning, medical, surgical, or other treatment. RMP shall not use online forums or agents for procuring patients. (L3).
10. **Prohibition of endorsement of a product or person:**

a. **Prohibition of endorsement -** RMP individually or as part of an organization/ association/ society etc. shall not give to any person any endorsement, certificate for any products or to software/platforms, drug brand, medicine, nostrum remedy, surgical, or therapeutic article, apparatus or appliance or any commercial product. (L3)

b. **Certificates of proficiency -** RMP shall not issue certificates of proficiency in modern medicine to unqualified, unskilled, or non-medical persons. The onus of the veracity of the certificates lies with the RMP. (L2)

11. Advertisement:

a. **Permitted to make a formal announcement** -RMP is permitted to make a formal announcement in any media (print, electronic or social) within 3 months regarding the following: (1) On starting practice (2) On change of type of practice (3) On changing address (4) On temporary absence from duty (5) On resumption of practice (6) On succeeding to another practice (7) Public declaration of charges. (L2).

b. **Restriction to place announcements** -RMP or any other person including corporate hospitals, running a maternity home, nursing home, private hospital may place announcements in the print, electronic and social media, but these should not contain anything more than the name of the institution, type of patients treated or admitted, kind of doctors and staff training and other facilities offered and the fees. (Guidelines on social media conduct) (L1 and/or L2)

c. **Restriction for soliciting patients**- RMP is allowed to do public education through media without soliciting patients (L2)

12. Responsibility of RMP regarding the sale of drugs:

a. **Not runs an open shop to sell medicines** - They are allowed to sell medication only to his/ her own patients. (L2)

b. **No exploitation** -RMP can prescribe or supply drugs, remedies, or appliances as long as there is no exploitation of the patients. (L2)

c. **Secret remedial agents** - RMP shall not administer, dispense or prescribe secret remedial agents of which he does not know the composition or action in the body. (L3)

13. Responsibility of RMP regarding the Medical Records:

a. **Maintain records inpatients for 3 years**- Every self-employed RMP shall maintain medical records of patients (inpatients) for 3 years from the date of the last contact with the patient for treatment, in a standard proforma laid down by the NMC. (Guideline) (L2)

b. **Medical records supply**-If any request is made for medical records to RMP responsible for patient records in a hospital or healthcare institution then documents shall be supplied within 5 working days. (L2)

c. **Medical records supply in emergencies**- efforts should be made to make the medical records available at the earliest. (L2)

d. **Computerization**- Efforts shall be made to computerize patient's medical records for quick retrieval and security. (L1, L2)

e. **Certificates** - RMPs are in certain cases bound by law to give or may from time to time be called upon to give certificates signed by them in their professional capacity. Such reports, certificates, or documents should not be untrue, misleading, or improper. A self-employed RMP shall maintain a Register giving full details of such certificates issued by him/her. (L3)

14. Cooperate in the investigation against incompetent - RMP shall cooperate in the investigation against incompetent, corrupt, unethical or dishonest conduct of other members of the profession without fear or favour. (L1)

15. Don't abet torture - The RMP shall not aid or abet torture, nor shall he be a party to either infliction of mental or physical trauma or concealment of torture inflicted by another person or agency in clear violation of human rights. (L3)

16. Don't Practice active euthanasia- as it shall constitute unethical conduct. Follow protocol for withdrawing life-supporting devices (End of Life Guidelines)

17. Respect the boundaries of the doctor-patient relationship -The RMP should not exploit the patient for personal, social, and business reasons (L2) and in particular, avoid sexual boundary violations. (L4)

18. **Shall not refuse treatment on religious grounds-** RMP shall conduct of sterility, birth control, circumcision, and medical termination of pregnancy when there is a medical indication. (L3)
19. **Informed Consent:**

a. **Before performing any clinical procedure-** diagnostic or therapeutic, or operation, the RMP should obtain the signed documented informed consent of the patient. (Consent Guidelines) (L4)

b. **Publish photographs or case reports of patients without their consent-** RMP shall not publish in any medical journal in any manner by which their identity could be revealed. (L1)

c. **Clinical drug trials -** involving patients or volunteers must comply with ICMR guidelines and the New Drugs and Clinical Trials Rules, 2018. (Research Guidelines) (L2 and/or L4)

20. **Social Media Guidelines** - Conduct of RMP on Social/Electronic and Print Media shall follow the prescribed guidelines (Social Media Guidelines) (L1)
21. **Guidelines on Reasonable Care and Skill-** "RMP should take due care in practice and exercise reasonable skills as expected, to preserve the life and health of the patient and follow the guidelines (Guidelines on Reasonable Care and Skill) (L4)"

Duties of RMPs towards their patients

22. **Keeping appointments:**

a. **Prompt in attending to the patients-** "RMP shall endeavor should keep in time with appointments or visiting/consultation hours. If the RMP is delayed for a valid reason, the patient should be informed. (L1)"

b. **Advise referral when necessary to another RMP** "RMP may refer for specialized treatment for the patient's ailment. (L1)

c. **Emergency life and limb saving procedure-** "In case of, RMP shall provide first aid and other services to the patient according to his expertise and the available resources before referral. (L3)"

23. **Incapacity:** "Registered Medical Practitioner having any incapacity detrimental to the patient is not permitted to practice his profession for the period of incapacity. Use of Alcohol or other intoxicants or being under influence during duty. (L3 and/or L4)"
24. **Confidentiality:** "Every communication between RMP and patients shall be kept confidential. (L2 and/or L3)"
25. **Truth-telling:** "RMP should neither exaggerate nor minimize the gravity of a patient's condition. (L1)"
26. **Patient care:** "RMP is free to choose whom he will serve, except in case of a life-threatening emergency"(L2 and/or L3 and/or L4)
27. **Referral:** "Only such Follow up consultation should be planned as required by the patient. Likewise, laboratory investigations ordered for the patient should be justified". (L2)
28. **Signatures:** "All signatures in the notes, prescriptions, certificates, orders, referral summaries etc. should carry the RMP's name and NMC Registration number". (L1 and/or L2)
29. **Consultation by Telemedicine:** "Consultation through Telemedicine by the Registered Medical Practitioner shall be permissible following the Telemedicine Practice Guidelines (Telemedicine Guideline) (L1 and/or L2)"

Responsibilities of RMP to each other

30. **Professional Integrity:** "In consultations, professional rivalry should not be indulged in". (L1 and/or L2)"
31. **RMP as Locum:** "Whenever RMP requests another RMP to attend to his patients during his temporary absence from his practice, professional courtesy requires the acceptance of such appointment only when the RMP can

discharge the additional responsibility along with his/her other duties". (L1 and/or L2)

32. **Reporting and Inspection:** "When it becomes the duty of RMP occupying an official position to inspect and report on an illness or injury, he should communicate this to the RMP in attendance to give him the option of being present". (L1 and/or L2)

Duties of RMPs towards the public and allied healthcare professionals

33. **Public Education and Awareness:**

a. **Disseminate scientific advice on public health** – "RMPs have a responsibility to issue public health advice without self-promotion". (L1)

b. **Quarantine regulations** – "At all times the RMP should notify the constituted public health authorities of every case of notifiable disease" (L1 and/or L2)

34. **RMP as a team leader -** "should recognize the importance of teamwork and respect the practice of different paramedical services. (L1)"

35. **Must not receive any gifts, travel facilities, hospitality** – "RMPs should avoid cash or monetary grants, consultancy fee or honorariums, or access to entertainment or recreation from pharmaceutical companies or their representatives, commercial healthcare establishments, medical device companies, or corporate hospitals under any pretext" (L3). One more reasons for rolling back of NMC code of conduct was dispute over prescribing sponsorship of conferences by pharma

36. **Power to Draft Guidelines:** "Ethics and Medical Registration Board (EMRB) will draft the guidelines/codes etc on Generic Drugs and Prescription, CPD Guidelines and Accreditation of Organizations, Telemedicine Guidelines, Code of Ethics, Guidelines on Penalties for Misconduct including the Monetary Penalty, Advertisement Guidelines, End of Life Guidelines, Consent in Medical Practice, Guidelines on Research by RMPs, Guidelines on Social Media Conduct of RMPs, Guidelines on Reasonable care and skill and Guidelines on Interaction with Pharmaceuticals, as and when required and will amend from time to time".

Professional Misconduct

37. **Professional Misconduct:** "Any violation of these Regulations shall constitute professional misconduct. Conviction of RMP in cases of a cognizable offence involving moral turpitude may result in the suspension of license to practice".

38. **Procedure for a complaint of professional misconduct** –

a. **Complaint to the State Medical council** – "The aggrieved person will file the complaint to the State Medical council through the website portal/offline, ordinarily within 2 years from the cause of action. (The complaint will be lodged in the SMC where RMP is located at the time of cause of action, both in tele-consultation or in person consultation)"

b. **Complaint may be filed by any authorized person** – "Where the aggrieved person is unable to make a complaint on account of physical or mental incapacity, a complaint may be filed by any authorized person.

39. **Manner of Inquiry into the complaint**

a. **Five copies for offline** - complainant shall submit to the EMRB or State Medical Council five copies for offline applications (till the whole process is made online) of the complaint along with supporting documents and the names and addresses of the witnesses".

b. **On receipt of the complaint-**"the SMC/ EMRB/NMC shall send one of the copies received to the respondent within 15 working days"

c. **File his reply in 15 days** - "The respondent shall file his reply to the complaint along with

his list of documents, and names and addresses of witnesses, within a period not exceeding 15 working days"

d. **Conduct an inquiry**– "The state medical council or EMRB/NMC shall conduct an inquiry into the complaint following the principles of natural justice".

e. **Refer the case for review to the designated committee** - "On receipt of the complaint, the State Medical Council shall refer the case for review to the designated committee, with assistance from a panel of experts"

f. **Ex-parte decision** – "The /State Medical Councilor EMRB/NMC shall have the right to terminate the inquiry proceedings or to give an ex-parte decision"

g. **Not be allowed to bring in any lawyer** –"The parties shall not be allowed to bring in any lawyer to represent them in their case at any stage of the proceedings before the State Medical Council or EMRB/NMC".

h. **Quorum**- In conducting the inquiry, a quorum shall be ensured.

I. **Complaint cannot be withdrawn** - No new documents or certificates or evidence or witness will be entertained from either of the parties once the proceedings are initiated. The complaint cannot be withdrawn after it is admitted by the SMC or EMRB/NMC.

j. **Change the subject matter experts** – "The State Medical Council or EMRB/NMC may either of its motion or on an application made by either of the parties have the power to change the subject matter experts".

40. Disposal of the Complaints: The State Medical Council or EMRB/NMC after giving the parties concerned an opportunity of being heard, may make any of the following recommendations:

a. Dismiss the complaint

b. Censure/Warn/Reprimand the RMP

c. Recommend counseling to the RMP

d. An alternative penalty can be considered (Guidelines for alternative penalties can be given by EMRB as and when required)

e. May restrain the RMP from performing the clinical procedure(s) or examination as deemed fit. Holding Suspension i.e. restraining RMP from practice until the case is decided- only with full consensus (Restrain will only be in subject matter of dispute).

f. Suspend the RMP from practice for a temporary period as it may deem fit by removing the name of the RMP temporarily from the National Medical Register.

g. Award monetary penalty as it deems fit as per Section 30 of the NMC Act, 2019 can be given by SMC/EMRB only as and when required and will go to SMC/EMRB/NMC account.

h. SMC/EMRB/NMC can charge monetary penalty up to 10 times of the license fee in case it is found during misconduct complaint case that the RMP has not taken license to practice in the state. (L1 and/or L2).

I. May direct the RMP to undertake specific training courses related to the misconduct/ some certificate course/ethics sensitization etc.

j. Permanent removal from NMR under exceptional circumstances by SMC must be ratified by EMRB.

k. Any suspension of RMP will automatically restore at completion of suspension period.

41. Prohibition of review of the order: SMC or EMRB/NMC will not have the power to review its order, and the order will be executed only after the expiry of the period of appeal.

42. Power of the SMC / EMRB NMC: The SMC and EMRB/NMC shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a complaint.

43. Delay in decision: "Where the EMRB is informed that a complaint against a RMP has not been decided by a State Medical Council within six months then EMRB can direct the

SMC to hear the case on day to day basis until the case is duly heard. The reasons for not deciding the case within the stipulated time shall be mentioned in the order of the SMC".

44. **APPEAL**

a. "RMP who is aggrieved by the decision of the State Medical Council shall have the right to file an appeal to the EMRB within 60 days after order passed by the said State Medical Council".

b. "RMP who is aggrieved by the decision of the Ethics and Medical Registration Board may prefer an appeal before the National Medical Commission within 60 days from the date of passing of an order by the EMRB".

c. Order of SMC will become operational after the expiry of the period of appeal (60days+60days). Order in appeal, the order of SMC will be deemed stayed unless decided otherwise by EMRB/NMC.

Summary

NMC enacted code of conduct on 02-08-2023 and rolled back on 23-08-2023 ill further notification. Meanwhile three major law related to evidence (sakshya), Penal (Nyay) and criminal procedure (Nagarik Suraksha) to aid day today judicial work. NMC code of conduct along with new Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 was introduced in Lok Sabha on August 11, 2023 are scaring. It shall repeal and replace the Code of Criminal Procedure (CrPC), 1973, when notified. The current CrPC provided for the procedure for arrest, prosecution, and bail for offenses under various Acts including the Indian Penal Code (IPC), 1860. Indian Penal Code (IPC), 1860 shall be repealed and replaced by The Bharatiya Nyay Sanhita (BNS), 2023, when notified. s. 104 under BNS is with respect to Causing death by negligence is punishable with jail up to seven years, with fine. IPC S 337, causing hurt and S. 338, causing grievous hurt (both covered under section 123 of BNS- hurt leading jail up to 3 months and grievous hurt up to 3 years with fine) Thus, we see doctors getting further trapped by new code of conduct of NMC, thus paving way for more defensive practice due to fear factor induced by new code of conduct BNS and BNSS are we?

Note : This editorial is based on the National Medical Commission code of conduct Guidelines 2023 and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 echoing Code of Criminal Procedure (CrPC), 1973, Bharatiya Nyay Sanhita (BNS), 2023 echoing Indian Penal Code (IPC), 1860

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Letter to Editor :

Branded V/s Generic Drugs: 2012 V/s 2023

Dr. Yash Paul

Received for publication : 17th July 2023 Peer review : 27th July 2023 Accepted for publication : 05th August 2023

Dear all,

The government and The National Medical Commission (NMC) state that only generic drugs should be prescribed and not the branded drugs.

I had raised some issues in year 2012 in an article published in Indian Journal of Medical Ethics.

No substantive change has occurred during these eleven year.

- Dr. Yash Paul

Review Article :

Challenges of Acquiring Medico Legal Knowledge for MBBS Graduates

Dr. Kalpana Ramesh

Received for publication : 22th July 2023 Peer review : 16th August 2023 Accepted for publication : 22nd August 2023

Keywords:

Medicolegal knowledge, MBBS graduates, challenges, strategies, acquisition, solutions

Introduction :

Medicolegal knowledge is essential for MBBS graduates in order to provide competent and informed care to their patients. However, there are a number of challenges to acquiring this knowledge. These challenges include:

- **Lack of dedicated medicolegal training in MBBS curriculums:** There is often a lack of dedicated medicolegal training in MBBS curriculums, which means that MBBS graduates may not have the opportunity to learn about medicolegal topics until they are already practicing medicine.
- **Complexity of medicolegal topics:** Medicolegal topics can be complex and challenging to understand, even for experienced medical professionals.
- **Lack of relevant clinical experience:** MBBS graduates may not have the relevant clinical experience to understand how medicolegal principles apply to real-world situations.

Challenges in Acquiring Medicolegal Knowledge for MBBS Graduates

- **Lack of awareness:** Most MBBS graduates are unaware of the importance of medicolegal knowledge. They may not realize how medicolegal issues can affect their patients or their own practice.
- **Lack of access to resources:** MBBS graduates may not have access to the resources they need to learn about medicolegal topics. This may include textbooks, journals, or qualified mentors.
- **Time constraints:** MBBS graduates are often under time constraints, which makes it difficult for them to find the time to learn about medicolegal topics
- **Difficult concepts:** Medicolegal topics can be difficult to understand, especially for those with no prior knowledge of the law.

Awareness of resources: There are many resources available to MBBS graduates who want to learn about medicolegal topics. However, many graduates may not be aware of these resources. Some of the resources available include:

- **Textbooks:** There are many textbooks available on medicolegal topics. These textbooks can provide graduates with a comprehensive overview of the field.
- **Journals:** There are many journals published on medicolegal topics. These journals can keep graduates up-to-date on the latest developments in the field.
- **Online resources:** There are many online resources available on medicolegal topics. These resources can provide graduates with information on a variety of topics, from the basics of medicolegal law to specific case studies.
- **Professional organizations:** There are many professional organizations that offer resources and support to MBBS graduates. These organizations can provide graduates with access to educational materials, networking opportunities, and mentorship programs.
- **Lack of time or motivation:** In addition to not being aware of the resources available, some MBBS graduates may not have the time or motivation to learn about medicolegal topics. This is understandable, as MBBS graduates are already facing a lot of demands in their training

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and practice. However, it is important for MBBS graduates to make time to learn about medicolegal topics, as this knowledge can help them to provide better care for their patients and protect themselves from legal liability.

- **Solutions and Strategies**

There are a number of solutions and strategies that MBBS graduates can use to acquire medico legal knowledge. These include:

Self-study

- Read textbooks, journals, or online resources.
- There are many online resources that provide free or low-cost access to medicolegal information.

Attending workshops or conferences

- Learn from experts and network with other professionals in the field.
- There are many workshops and conferences offered throughout the year, both locally and nationally.

Seeking mentorship

- Get guidance on how to apply this knowledge in practice.
- Many experienced medico legal professionals are willing to mentor MBBS graduates.

Participating in research

- Gain first-hand experience in medicolegal issues and contribute to the field.
- There are many research opportunities available to MBBS graduates, both in academic settings and in clinical settings.

Take advantage of continuing medical education (CME) opportunities

- Learn about new developments in the field and earn continuing education credits.
- There are many CME opportunities available to MBBS graduates, both online and in person.

Join a medicolegal society or association

- Network with other professionals in the field and stay up-to-date on the latest medico legal developments.
- There are many medico legal societies and associations available to MBBS graduates, both nationally and internationally.

Seek out medicolegal internships or fellowships

- Gain hands-on experience in the field.
- There are many medicolegal internships and fellowships available to MBBS graduates, both nationally and internationally.
- **Volunteer with a medicolegal organization**
- Learn about medicolegal issues and give back to the community.
- There are many medicolegal organizations that welcome volunteers, both locally and nationally.

The increasing use of technology in medicolegal investigations and the growing importance of patient safety:

- **Increasing use of technology in medicolegal investigations:** Technology is increasingly being used in medicolegal investigations to help gather and analyse evidence. For example, digital imaging technologies, such as computed tomography (CT) and magnetic resonance imaging (MRI), can be used to create detailed images of injuries or medical conditions. These images can be used to help identify the cause of death or injury, or to reconstruct the events leading up to a crime.
- **Growing importance of patient safety:** Patient safety is a major concern in the healthcare industry. Medical errors are the third leading cause of death in the United States, and they can have a devastating impact on patients and their families. There are a number of things that can be done to improve patient safety, such as implementing checklists, using barcode technology, and conducting regular risk assessments. Some specific examples of how technology is being used in medicolegal investigations and how it is improving patient safety:

Digital imaging technologies:

- CT scans can be used to identify and document

injuries, as well as to assess the extent of damage to organs and tissues.

- MRI scans can provide more detailed images of soft tissues, such as the brain and spinal cord.
- This information can be used to help determine the cause of death or injury, and to assist with legal proceedings.

DNA testing:

- DNA testing can be used to identify victims of crime, to link suspects to crime scenes, and to exclude suspects from investigations.
- This technology has been used to solve a number of high-profile cases, and it is becoming increasingly common in medicolegal investigations.

Telemedicine:

- Telemedicine allows doctors to consult with patients remotely, using videoconferencing technology.
- This can be useful in rural areas where there is limited access to healthcare, and it can also be used to provide expert consultation in medicolegal cases.

Big data analytics:

- Big data analytics is the use of large datasets to identify patterns and trends.
- This technology can be used to identify potential risks to patient safety, such as medication errors or hospital-acquired infections.

Conclusion

Medicolegal knowledge is essential for MBBS graduates. It can help them to:

- Avoid medical malpractice claims
- Provide better care to their patients
- Comply with the law

However, there are a number of challenges to acquiring this knowledge, including:

- Lack of awareness of resources
- Lack of time or motivation
- Complexity of medicolegal topics

Despite these challenges, there are a number of things that MBBS graduates can do to acquire medicolegal knowledge. These include:

- Making time to study
- Finding a mentor
- Staying up-to-date on the latest developments in the field

By taking the time to learn about medicolegal topics, MBBS graduates can help to ensure that they are providing the best possible care for their patients and protecting themselves from legal liability.

The importance of lifelong learning in medicolegal medicine

As the field of medicine and the law continue to evolve, it is important for MBBS graduates to stay up-to-date on the latest developments. This can be done by reading journals, attending conferences, and taking continuing education courses.

The importance of teamwork in medicolegal cases

MBBS graduates may need to work with lawyers, law enforcement officials, and other healthcare professionals to investigate and resolve medicolegal cases. This is why it is important for MBBS graduates to develop strong communication and teamwork skills.

The importance of ethics in medicolegal medicine

MBBS graduates must always act ethically and in the best interests of their patients, even in medicolegal cases. This is essential to maintaining the trust of their patients and avoiding legal liability.

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Letter to Editor :

Personal Opinion: Which is most noble profession?

Dr. Yash Paul

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Profession is defined as economic activity that requires special knowledge and skill to be applied by individuals for earning their living. Noble worker may be defined as person who has high moral principles. Any job which is done with honesty is a noble job. Presently doctors, teachers and lawyers are considered belonging to noble profession because doctors provide benefits to their patients, teachers to the students and lawyers to their clients.

All professions are essential. Can we do without roads, water, electricity etc.? In my personal opinion high importance should be given to sanitary workers. Poor sanitation is linked to transmission of diseases. These people face risks to reduce risks to people. Thus. in my view sanitary workers' job should be considered most noble profession.

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Medicolegal News

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Patient Persuaded To Opt For Titanium Implant Instead Of Steel Implant, Forum Slaps Rs 80 Lakh Fine On Orthopaedic Doctor, Hospital

Bhubaneswar: An attending orthopaedic doctor at VIMSAR, a doctor and a private nursing home has been held guilty of medical negligence by the District Consumer Disputes Redressal Commission (DCDRC) in Odisha's Sambalpur district and directed to pay a fine of around Rs 80 lakhs to a patient.

As per various media reports, the patient had requested the doctor to opt for titanium implant and not stainless steel implant. However, the doctors went against his wish and fixed stainless steel implant resulting in botched up treatment that costed the patient his job apart from rendering him physically challenged.

The forum, in the order passed on Tuesday mandated a fine of Rs 78,66,141 which included Rs 20 lakh each by both the doctors (the doctor from VIMSAR and the other from Sambalpur-based Sparsh City hospital, a private nursing home) and the nursing home along with Rs 2.41 lakh towards treatment cost of the victim and Rs 16.25 lakh for losses incurred due to medical negligence.

The patient, Sumit Dash met an accident between Sambalpur and Burla towns in 2017, and sustained multiple fractures involving his right leg, right foot and right hand. The following day, he was admitted to the V.S.S. Medical College Hospital, Burla.

However, the orthopaedic doctor told the accident victim that the operation would be possible in a government-run hospital after four days, whereas he [the doctor] could perform the operation in a private hospital on the following day. Going by this advice, the then 24-year-old patient preferred the private nursing home over the government hospital.

He was shifted to the private hospital where he underwent surgery and stayed for 12 days, spending Rs 1.26 lakhs including Rs 42,200 as doctor fees.

During pre-operative consultations, the patient's family requested for titanium implant for the fractured bone connecting his knee and ankle, however, the surgeons went for a stainless steel implant that led to infection post operation.

Within a few months of surgery, the patient complained of pain on his right ankle and pus was formed around one of the screws implanted within. Though the patient approached the orthopaedic doctor, he only kept prescribing medicine to control the infection. Soon, the infection worsened.

In August 2018, the patient was compelled to move to a private hospital in Visakhapatnam where he was admitted for around two weeks and warranted a corrective surgery which cost him Rs 1,38,397. The corrective surgery resulted in multiple deformities in the treatment site including shortening of his right leg and the patient underwent treatments, operation and physiotherapy to restore normal functionality. The patient is still under treatment.

As the patient ran from one hospital to another for recovery, he could not join a job offered to him by an IT giant. He had got the job offer of systems engineer at Infosys with a monthly salary of Rs 27,084, however, the "wrong advice" cost him considerable time at the beginning of his career.

The complainant's lawyer, Prem Prakash Panigrahi was quoted as saying by The New Indian Express that, "The negligence in treatment has caused lasting repercussion on my client which will continue throughout his life. The judgement

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will serve as an example."

He further alleged that, "Although being a premier medical institute, if you send patients to a sub-standard level hospital for treatment, it means you don't have belief in your own hospital. When my client was undergoing treatment, he was not given proper treatment."

Hearing the case, the court ruled that in case of non-payment of compensation within a month of the order, the defendant will be liable to pay interest of 12% per annum until realization. This apart, the consumer court has also ordered to pay another Rs 18,66,140 which includes Rs 2,41,101 spent by the complainant towards medical expenses and a pecuniary loss of Rs 16,25,040 which the complainant suffered for about 60 months after losing his job.

The forum further observed that due to deficiency in service, not only the victim, his family members too suffered turmoil and monetary losses.

Meanwhile, the lawyer of the private hospital's owner informed that they will move the Odisha State Consumer Disputes Redressal Commission against the ruling.

Ref.: *https://medicaldialogues.in/news/health/medico-legal/patient-persuaded-to-opt-for-titanium-implant-instead-of-steel-implant-forum-slaps-rs-80-lakh-fine-on-orthopaedic-doctor-hospital-Accessed on 29/08/2023*

Gross Medical Negligence At Safdarjung Hospital: NCDRC Upholds Rs 11 Lakh Compensation

New Delhi: The National Consumer Disputes Redressal Commission (NCDRC) recently upheld the 2018 order passed by the Delhi State Consumer Court, which had held Safdarjung Hospital guilty of medical negligence and directed the hospital to pay Rs 11.05 lakh to a man whose wife died allegedly due to deficiency in service.

While considering the hospital's plea challenging the State Commission's order, the NCDRC bench observed that the State Consumer Disputes Redressal Commission had passed the order on the basis of the expert reports on the treatment given to the deceased.

Therefore, upholding the previous order, the top consumer court noted. "Findings of fact recorded by State Commission that there was medical negligence in providing treatment to the wife of the complainant is based upon various expert of the expert committee on record and do not suffer from any illegality. The State Commission has awarded compensation of Rs.1105000/- to the complainant along with 7@ interest p.a. The appellant has failed to prove any illegality or irregularity in the impugned order."

According to the complaint lodged by the complainant, his wife was being treated for obesity and diabetes at another hospital when she suffered severe pain in her abdomen on April 22, 2006.

Her husband rushed her to Safdarjung hospital with all her reports but she allegedly could not get proper treatment till 40 hours of her admission. The complainant, while seeking Rs 45 lakh compensation, alleged that after his wife was put on a drip, she started feeling restless and vomited.

He informed the staff there but her health kept deteriorating, he claimed. He further claimed that his wife was not attended by any doctor nor any tests were conducted till the next day and ultimately she died four days later due to medical negligence.

On the other hand, the hospital had denied negligence and stated that they had made every effort to provide best treatment to the patient. If the attendants of the patient were not satisfied with their treatment, they were at liberty to seek discharge of the patient, submitted the hospital.

Further, the hospital had informed that blood count, blood sugar, blood urea, serum electrolyte and CT scan tests were done in the emergency in the night of 22/23.04.2006. Patient

did not require ICU care on that night and CT scan report was found to be normal. It was also submitted by the hospital that the patient could not be shifted to ICU as no ventilator was available there. Some complications like ARF with syptosymtic, CVA, DKA, Uraniem and syplopathy were suspected.

It was earlier reported that while considering the complaint, the Delhi State Consumer Court back in the year 2018 had directed Safdarjung Hospital to pay Rs 11.05 lakh to the complainant.

Further, clarifying that over-crowded wards and overtime duty of doctors were not excuses to justify medical negligence, the Commission had directed the hospital, which is one of the largest central government hospitals in India, to ensure that an adequate number of doctors or specialists remain on duty irrespective of the fact that a particular day is a working day or a holiday.

The State Consumer Court while referring to report from Directorate General of Health Services (DGHS) which had taken strong exception to the hospital's conduct, had said there was "gross negligence" on the part of the hospital as the 42-year-old patient could neither be shifted to ICU nor put on ventilator due to non-availability of beds.

Besides referring to the DGHS report, it also considered the report by Medical Council of India (MCI) and Delhi Medical Council (DMC) which had observed that the management of the hospital was required to undertake appropriate steps for improving communication between doctors and relatives of the patient.

However, the order of the State Commission was challenged by the hospital. While considering the matter, the NCDRC bench noted that the erstwhile Medical Council of India found negligence of the Doctors and in a letter dated 26.08.2010, the Council had opined that a letter of caution should be issued to Dr. Gupta and Dr. Kansara, to be more careful in future in maintaining the patients record and that they should have informed the seriousness of the patient's condition to the patient/attendant from time to time.

Further, the Apex Consumer Court observed that in its report dated 19.12.2006, the Delhi Medical Council had found Safdarjung Hospital guilty of not explaining the prognosis to the relatives of the patient and observed that the hospital should improve the communication between the Doctors and the patient's relatives. Delhi Medical national consumer disputes redressal commission ncdrc safdarjung hospital medical negligence Council also observed that no Doctor examined the patient on 23.04.2006 and the treatment was given by the nurse only and no investigations were done until 24.04.2006.

Taking note of these facts, the NCDRC bench observed, "Findings of fact recorded by State Commission that there was medical negligence in providing treatment to the wife of the complainant is based upon various expert of the expert committee on record and do not suffer from any illegality."

Therefore, the top consumer court dismissed the appeal by Safdarjung Hospital and awarded Rs 1105000/- compensation to the complainant along with 7@ interest p.a.

Ref.: *https://medicaldialogues.in/news/health/medico-legal/gross-medical-negligence-at-safdarjung-hospital-ncdrc-upholds-rs-11-lakh-compensation Accessed on 29/08/2023*

Delay In Performing Surgery Amounts To Negligence: Kamineni Hospital, Surgeon Directed To Pay Rs 6 Lakh Compensation

Hyderabad: Noting that delay in performing the operation amounts to not only negligence but also the deficiency of service, the Telangana State Consumer Disputes Redressal Commission has directed Kamineni Hospitals Ltd and pediatric

orthopaedician to jointly pay a compensation of Rs 6 lakh as a redressal measure for the harm caused to a patient suffering from cerebral palsy with hemiplegia.

The Commission, comprising of V.V. Seshubabu (Member) and R.S. Rajeshree (Member) found the hospital liable for medical negligence and deficiency in service in performing surgery for the removal of an implant in the right leg and surgery on both legs of the 15-year old patient.

The case pertains to Sai Nath, a resident of Safilguda, represented by his father and natural guardian. Sai Nath was born with cerebral palsy with hemiplegia. He had undergone surgery on both legs at Sunshine Hospital two years ago and had an implant (LCP) fixed in his right leg. The doctors advised him to remove the implant after two years. However, when he approached Sunshine Hospital for the removal, he was advised to go to Kamineni Hospital instead.

On 30.08.2017, he underwent surgery for the removal of the implant and surgery on both legs at Kamineni Hospital. However, on the night of the surgery, he experienced severe pain and was found to have a fractured bone in his right leg. The complainant alleged negligence on the part of the doctor while attempting to remove the implant. The patient's family alleged that even though the boy was crying and yelling after the surgery, he was only given painkillers.

X-ray revealed that the bone in the leg was fractured. The doctor suggested that the fractured bone be fixed with a similar plate and stated that the plate will be a permanent one. In the complaint, the boy's family alleged that the fracture was a result of medical negligence on the part of the doctor. After the second operation, contrary to his previous statement, the doctor informed the family that the new implant will have to be removed after one year.

On the other hand, Kamineni Hospitals and Paediatric Orthopedician contended that the complainant had prior medical issues, including Hydrocephalus, which can lead to neuromuscular disorders and weaker bones. They claimed that they informed the complainant's parents about the risks and complications involved in the surgery. They asserted that the fracture in the right femur was an undisplaced fracture discovered during surgery, and they managed it conservatively.

The Commission, taking into account the evidence presented during the proceedings, noted that the complainant's surgery was performed on 30.08.2017, during which an undisplaced fracture in the right femur was observed. However, it was highlighted that no X-ray was taken on the day of the surgery. The Commission observed; "Admittedly, no X-ray was taken on 30.08.2017. RW1 (the evidence affidavit filed by the doctor on his and the hospital's behalf) stated that as complainant was not co-operating no X-ray was taken on 30.08.2017; that though bed side X-ray was available but clarity of the images was not clear. Ex.A12 was the X-ray which was taken on 31.08.2017. The perusal of Ex. A 12 X-ray film goes to show that, the bone took a different angle and leaned to the right side at the mid region. When the Ex. A 12 shows such badly displaced bone, the surgery was performed on 02.09.2017."

Furthermore, the Commission found that there was a significant delay in performing the operation, given the complainant's physical and mental condition. This delay was deemed negligent and a deficiency of service on the part of the Orthopedic Paediatrician. It observed; "No acceptable reasons are given for such delay inspite of statement of RW1. The patient continuously crying after operation dated 30.08.2017. Taking into consideration the physical and mental status of the complainant the delay in performing the operation amounts to not only negligence but also the deficiency of service."

Additionally, the Commission observed that the record appeared to have been tampered with, to absolve the doctor from negligence. Such tampering raised serious concerns and cast doubt on the reliability of the information presented. It remarked; "When RW1 (the evidence affidavit filed by the doctor on his and the hospital's behalf) failed to observe the undisplaced fracture at the time of operation dated 30.08.2017 (by his own admission), ventured to make a note in the case sheet on 30.08.2017, that the; attendants have been informed the peri-operative event of fracture thigh L screw site. The x-ray on 31.08.2017 (Ex.A12) was advised at 8:30 AM. So, there is no chance for RW1 even remotely to say that, there was undisplaced fracture while he was trying to remove the screw affixed to the plate. Making an entry regarding such fact on 30.08.2017 at 6:00 PM, is nothing but tampering the record to absolve himself from negligence and deficiency of service. The brittleness of bones is not the point for consideration to assess the negligence of RW1, but the tampering of record and setting forth of version in the written statement that he observed the undisplaced fracture at the time of operations and thought of treating conservatively and for that reason applied POP etc., is nothing but tissues of false statement. So, all the points are answered against the opposite parties."

In light of the evidence and the complainant's physical and mental condition, the Commission subsequently ruled that the complainant was entitled to compensation, and directed the hospital and the doctor to pay the complainant a sum of Rs 6 lakh with an interest of nine per cent from 2017 till the date of payment, and made it clear that failure to comply with the order within a month will result in an interest of 12 per cent per annum.

Furthermore, the Commission clarified that the liability of the insurance company, which was also a responding party, would only arise after the hospital's payment. The insurance company was, therefore, instructed to reimburse the hospital as per the terms and conditions of the policy.

The Commission held; "When PW1 failed to place any documentary evidence to show that the complainant is taking physio therapy and when the treatment was given to the complainant under Arogyha Bhadratha Scheme, not incurred any expenses for the treatment. Taking into consideration physical and mental status of the minor complainant we are of the view that compensation of Rs.6,00,000/- with interest @9% from the date of complaint till the date of payment, will meet the ends of justice. The liability of opposite party No.3 arises only after payment of amount by opposite party No.1 & 2 and thereafter opposite party No.3 shall reimburse them as per terms and conditions of the policy."

It added, "The complaint is partly allowed with a direction to the opposite parties No.1 (Kamineni Hospitals Ltd) & 2 (Doctor Orthopedic Paediatrician) with joint and several liability to pay Rs.6,00,000/- as compensation to the complainant with interest @9% p.a., from the date of complaint i.e., 07.12.2017 till the date of payment, besides costs of Rs.20,000/- that on making such payment by the opposite party No.1&2, the insured/opposite party No.3 (The Oriental Insurance Co.) is directed to reimburse them."

Ref.: *https://medicaldialogues.in/news/health/medico-legal/delay-in-performing-surgery-amounts-to-negligence-kamineni-hospital-surgeon-directed-to-pay-rs-6-lakh-compensation-115313 Accessed on 29/08/2023*

Every Inpatient Fall Cannot Be Considered Result Of Malpractice Unless Caused By Medical Negligence: Commission Absolves Indraprastha Apollo Hospital

New Delhi: Holding that every fall cannot be considered a result of malpractice unless it was caused by medical negligence, the Delhi State

Consumer Disputes Redressal Commission has junked a complaint against Indraprastha Apollo Hospital, Sarita Vihar alleging medical negligence in handling a patient of Metastatic Hilar Cholangiocarcinoma with dislodged percutaneous transhepatic biliary drainage (PTBD), who fell from the hospital bed and eventually died.

Justice Sangita Dhingra Sehgal (President), Pinki (Judicial Member) and J. P Agrawal, (Member Judicial) clarified that to constitute a fall injury in a medical facility, the fall must have been the result of a medical provider's failure in providing an acceptable level of care.

In the instant case, medical record suggested that the patient was immediately attended to after the fall and all necessary actions were taken but if the patient did not survive, the blame cannot be passed on to the Hospital and the medical staff/doctors who provided all possible treatment within their means and capacity, the Court further said.

The Case - The case concerns a gastroenterology patient diagnosed and treated for obstructive jaundice and intra hepatic cholangiocarcinoma at the Pushpawati Singhania Research Institute for Liver, Renal and Digestive Diseases and at Medanta Medicity, Gurgaon in 2013. In 2014, the patient was first admitted with the Indraprastha Apollo Hospital in the Department of Medical Oncology for chemotherapy. The patient was thereafter admitted with the facility on four occasions and was discharged on the same dates after chemotherapy.

The patient was admitted in the Department Gastroenterology for further treatment, where he was noted to have altered sensorium, not responding to commands and sustained a fall. It was alleged that when the patient had to answer the urge of urination, and rang the bedside bell, there was no duty nurse available in the room. The attendant, brother-in-law of the patient, had immediately tried to arrange the pot for urination, which was kept under the bed, however, in a split of second, the said patient fell from the bed. The attendant helped the patient to get onto the bed, and a little while after that the patient lost his senses and never recovered.

Thereafter, the patient was shifted to Liver ICU at and put on ventilator support. The kin of the patient submitted in their complaint that they were in a total state of shock and requested to refer the patient to some other hospital, if Apollo was unable to handle the patient. The doctors of the facility allegedly retorted to invoke the "LAMA", without any referral notes for another institute. They claimed to have no choice but to continue the treatment with Indraprastha Apollo. Eventually, the patient expired and the death certificate reflected cause of death as intracranial bleeding along with Metastate Cholangiocarcinoma.

Aggrieved, the deceased patient's wife, two daughters and mother filed a complaint with the Commission alleging medical negligence and seeking a compensation of over Rs 70 lakh.

The Allegation- The Complainants submitted that the head injury was thoroughly documented by the Hospital but there was not even a single clinical observation or investigation directing towards bleeding by pre-exisiting ailments. Secondly, it submitted that neither the patient nor the attendants were educated about the alleged risks of fall. Thirdly, it submitted that the treating doctors of the Hospital insisted the Complainant to sign a printed document "Apollo Fall Risk Assessment Tool (ARFAT)" and had forged and inserted instructions related to "Education on Fall Prevention" above the signatures of the deceased's wife.

It further submitted that the deceased was oriented and in his senses, still his signatures were not obtained on the alleged document and the facility filled the columns on its own accord. The

Complainants submitted that the sheer disregard of standard medical practice and lack of competence of the Hospital made the death inevitable, and as such necessity arose to file the present Complaint.

Response to the Allegations- In reply to the allegations, the hospital submitted that the attendant of the patient took it upon himself to make the patient sit without awaiting for help from the staff and thus left the patient vulnerable to a fall. Secondly, it submitted that the patient/deceased was a case of advanced metastatic cancerous disease, had severe jaundice with deranged liver functions and deranged coagulation parameters (prolonged Prothrombitine) which made the him very prone to bleeding anywhere in the body including intra-cranial bleeding.

Lastly, it submitted that the Nursing Admission Assessment & Action record clearly shows that the vitals of the patient were taken by the nurse on duty and the patient as well as his attendant were explained the use of side rails, call bell, visitation policy, rules regarding safety precautions at the time of allotment of the bed.

Observations- After hearing the counsel for the parties, the Commission, noted that the Patient and Family Education Documentation clearly reflects that the wife of the patient was educated on "Fall Prevention Modules". The said document bears the signature of her undertaking that she has understood the education provided. The said document also bears the signatures of the treating doctor, nurse and dietician. "Therefore, it is established beyond doubt that the Complainant was educated about the fall prevention on the very same day the patient was admitted with the Hospital," it concluded while deliberating the concern of whether the Hospital educated the patient/attendant regarding fall prevention.

The Commission further clarified on the allegation that the document Apollo Falls Risk Assessment Tool (AFRAT) was concocted by the Hospital. It said; "The Complainants have merely made bald averments devoid of any cogent proof to show that the said document is a concocted one. It is pertinent to mention here that it is a common practice amongst medical professionals to write prescriptions/directions on documents pertaining to medical records of the patients with a view to facilitate compliance with the said prescriptions/ directions. Even if it is assumed that the said instructions were inserted later, the wife of the patient was already educated on Fall Prevention Modules by the Patient and Family Education Documentation. Furthermore, It is to be noted that the bed of the patient was equipped with bed rails and a call bell. The said documents is a tool to assess the risk of fall and merely reiterating the instructions for use of already existing bed rails, call bell, fall prevention etc does not amount to fabrication."

It went on to clarify that the contention of the Complainants that no neurological consultation was taken was not sustainable as well as, the neurological status chart reflects that the patient's total coma score based on his response to external stimuli was assessed by the Hospital.

It observed; "The medical record suggests that the patient was immediately attended to after the fall and all necessary actions were taken but if the patient did not survive, the blame cannot be passed on to the Hospital and the medical staff/doctors who provided all possible treatment within their means and capacity."

Elaborating on the most important query of whether the Hospital's conduct can be attributed to the fall of the patient and whether such conduct amounts to medical negligence, the Commission noted; "Prevention of patient falls is critical, however, some hospitalized patients fall despite intensive efforts. Inpatient falls and fall related injuries continue to be a complex challenge that health care organizations face. However, every fall cannot be considered a result of malpractice unless

it was caused by medical negligence. To constitute a fall injury in a medical facility, the fall must have been the result of a medical provider's failure in providing an acceptable level of care. For instance, a doctor failed to diagnose or misdiagnosed a condition that affects the patient's balance or the patient was overmedicated, not made aware of a medication's side effects, or prescribed a medication that conflicted with another medication and/or the patient's fall risk was not assessed or managed correctly."

Referring to Hon'ble Apex Court judgment titled as Jacob Mathew v. State of Punjab and Anr (2005) 6 SCC 1, among other similar judgements, the Commission concluded that; "It is clear from the record that the bed of the patient was equipped with bed side rails and a call bell. The vitals of the patient were being timely recorded and there was never a stage when the patient was left unattended. The patient was kept under the supervision of specialist doctors. The Complainants have alleged that the nurse on duty did not respond to the call bell and the patient fell himself while making an effort to sit. Here, it is to be noted that the Complainant has herself admitted that the patient fell himself."

It further highlighted that, "the patient was admitted in the general ward where a limited number of nurses have to look after several patients, to the extent that at times a single nurse is duty bound to attend 3-4 patients. The medical staff/nurse cannot be expected to be present round the clock around the patient and can only be expected to provide reasonable care and attention to the patient."

Further, "The family attendant i.e. brother in law of the patient was present in the ward to look after the patient. It is to be noted that despite the presence of the family attendant, the patient sustained a fall. It is admitted that the patient sustained a fall within a split of a second and the family attendant despite being there in the close vicinity of the patient, could not prevent the fall. Therefore in facts and circumstances of the present case, the blame cannot be entirely shifted on the Hospital and the medical staff/doctors.," the Commission added.

Subsequently, the Commission dismissed the complaint and noted; "In the instant case, it may be mentioned here that the Complainants have led no evidence of experts to prove the alleged medical negligence except their own affidavits. The experts could have proved if any of the doctors in the hospital providing treatment to the patient were deficient or negligent in service. A perusal of the medical record produced does not show any omission in the manner of treatment."

"As discussed above, the sole basis of finding the Hospital negligent is by way of res ipsa loquitor which would not be applicable herein keeping in view the treatment record produced by the Hospital. For the application of the maxim res ipsa loquitur no less important a requirement is that the res must not only bespeak negligence, but pin it on the Opposite Party. The experts of different specialities and super specialities of medicine were available to treat and guide the course of treatment of the patient. The doctors are expected to take reasonable care but none of the professionals can assure that the patient would overcome the ailments in all probability."

It opined that the Hospital provided standard level of fall prevention services and medical care. The hospital and the doctor/nurses exercised sufficient care in treating the patient in all circumstances. However, in an unfortunate case, death may occur. The Commission before dismissing the complaint found it necessary to remark that; "Sufficient material or medical evidence should be made available before an adjudicating authority to arrive at the conclusion that death is due to medical negligence. Every

death of a patient cannot on the face of it be considered to be medical negligence."

Ref. : *https://medicaldialogues.in/news/health/medico-legal/every-inpatient-fall-cannot-be-considered-result-of-malpractice-unless-caused-by-medical-negligence-commission-absolves-indraprastha-apollo-hospital-116077 Accessed on 29/08/2023*

H1N1 Test Not Promptly Conducted On Symptomatic Patient: Consumer Court Finds Fortis Hospital, Nephrologist Guilty Of Negligence

New Delhi: The National Consumer Disputes Redressal Commission (NCDRC) recently held Fortis Hospital and its Nephrologist guilty of not conducting an H1N1 test promptly while treating a patient having a history of Kidney transplantation.

After being admitted to Fortis Hospital, the patient was later shifted to Government designated hospital after being tested positive for Swine Flu. The NCDRC bench took note of the signs and symptoms of the patient as mentioned in the medical record.

Further referring to the Government Guidelines for treating patients with Flu-like symptoms, the NCDRC bench noted that the patient was certainly covered under Category A and Category B patients during his 1st hospitalisation.

Additionally, when the patient was readmitted a couple of days later, he not only had a cough with sputum with a mild fever over two weeks but was also complaining of breathlessness, and on physical examination also he was found to be "breathless".

"This symptom of "breathlessness" is the additional component included in the Guidelines pertaining to Category 'C' apart from the other symptoms of Category 'A' & 'B' i.e. cough with sputum and fever etc. Consequently, he was required to undergo testing, immediate hospitalisation and treatment, although no tests for H1N1 in the case of Category 'A' & 'B' were required in terms of the Govt. Guidelines," opined the top consumer court.

With this observation, the NCDRC bench held Fortis Hospital and its treating doctor guilty of medical negligence and upheld the order of the District Forum in this regard. The matter concerned the complainant's father, who previously underwent kidney transplantation operation twice. However, on 07.12.2009, the patient was experiencing cough and fever and was consequently admitted to the Fortis Hospital Noida under the supervision of the treating Nephrologist Dr Singhal.

When the patient was diagnosed with Swine Flu, he was shifted to another hospital as Fortis Hospital informed that they would not treat the patient for Swine Flu. It was alleged by the Complainant that even though the doctor and hospital took steps to transfer the deceased to another hospital. However, they failed to examine and treat the patient properly, thoroughly, and on time.

After being shifted to Apollo Hospital, the patient expired on 28.12.2009. The Complainants contended that if the h1N1 tests had been conducted in time along with other necessary examinations then the life of the deceased could have been saved.

They further contended that the doctor and the hospital were negligent and careless and they did not treat the patient seriously. They also alleged that Dr. Singhal stopped the medicines for kidneys essential for the transplanted kidneys due to which those kidney failed completely and the deceased patient fell back on dialysis due to which Blood Pressure decreased and it ultimately resulted in his death. Therefore, filing complaint before the District Forum, the complainants alleged deficiency in services by Fortis Hospital and its

nephrologist and sought a compensation of Rs 16,30,000 for negligence and Rs 3,14,075 as treatment expenses.

On the other hand, the doctor and the hospital denied all the allegations and any kind of deficiency in service on their part. They contended that the patient was provided with the best medical treatment and he was critical at the time of admission. However, his condition got stable during treatment at Fortis Hospital and therefore he was discharged on 13.12.2009.

Confirming that the patient was readmitted a few days later, the hospital and doctor submitted that the patient was treated with Antibiotics and other support systems.

They also referred to the Guidelines of the Ministry of Health and submitted that in view of the ongoing Swine Flu pandemic at that time, the patient's sample was sent for testing to a Government approved Hospital. Since the test result came out positive, the doctor and hospital immediately referred the patient to a centre authorised by the Goverment for treatment of patients having H1N1 Flu.

It was contended that the Government of India had strictly directed Hospitals to refer patients suffering from Swine Flu to the designated hospital. They also submitted that among the list of designated hospitals, the patient chose Apollo Hospital and accordingly appropriate arrangements were made by the Fortis Hospital to transfer the patient.

While considering the matter, the District Forum observed that the Fortis Hospital and its doctor never considered the patient for Swine Flu and the Forum further opined that if the test for Swine Flu would have been done then a proper treatment could have been initiated.

Further taking note of the fact that Fortis Hospital knowingly disobeyed the directions of the Health Department, the District Forum opined that the treatment was given in a negligent manner and the level of treatment was very poor. Therefore, the hospital and the doctor were directed to Rs 3,64,075 to the Complainants.

However, the order of the District Forum was challenged before the State Commission, which set aside the previous order. This was challenged by the complainants before the NCDRC bench.

After perusing the medical records of the patient, the Apex Consumer Court took note of the Discharge Summary of the diseased for the first and second time of hospitalisation. The Discharge summary mentioned details about the diagnosis, procedure, chief complaints and physical examination.

Apart from this, the Apex Consumer Court also noted that the Government Guidelines on categorisation of Influenza A H1N1 cases revised on 5.10.2009. The Directorate General of Health Services, Emergency Medical Relief of the Union Government on 28.10.2009 had categorised individuals seeking consultations for Flu like symptoms in three categories "A, B and C".

The Guidelines for Category A patients stated, "Patients with mild fever plus cough/sore throat with or without body ache, headache, diarrhoea and vomiting will be categorized as Category-A. They do not require Oseltamivir and should be treated for the symptoms mentioned above. The patients should be monitored for their progress and reassessed at 24 to 48 hours by the doctor."

In respect of the Category B patients, the Guidelines stated that in addition to all the signs and symptoms mentioned under Category-A, "if the patient has high grade fever and severe sore throat, may require home isolation and Oseltamivir", and individuals having one or more of the high risk conditions such as children with mild illness but with predisposing risk factors,

pregnant women, persons aged 65 years or older, patients with lung diseases, heart disease, liver disease, kidney disease, blood disorders, diabetes, neurological disorders, cancer and HIV/AIDS, patients on long term cortisone therapy- shall be treated with Oseltamivir.

Referring to the Category 'C' patients, the Guidelines stated that a patient will require testing and immediate hospitalisation and treatment if in addition to the signs and symptoms of Category A and B, he/she has symptoms such as breathlessness, chest pain, drowsiness, fall in blood pressure, sputum mixed with blood, bluish discolouration of nails. if the patient is a child with influenza like illness who had a severe disease as manifested by the red flags signs, and if the patient is discovered with worsening of underlying chronic conditions.

Referring to the Discharge Summaries issued by the Fortis Hospital for the first and second hospitalisation of the patient, the NCDRC bench noted that "the deceased was having the complaints of cough with sputum, breathlessness and mild fever for two weeks and the symptoms had aggravated for 2-3 days prior to such date of admission."

Therefore the Commission opined that the patient was certainly covered under Category 'A' and 'B' of the Government Guidelines till that time. However, the Commission observed that when the patient was readmitted a few days later, he not only had cough with sputum with mild fever over two weeks but was also complaining of breathlessness and on physical examination also he was found to be "breathless".

"This symptom of "breathlessness" is the additional component included in the Guidelines pertaining to Category 'C' apart from the other symptoms of Category 'A' & 'B' i.e. cough with sputum and fever etc. Consequently, he was required to undergo testing, immediate hospitalisation and treatment, although no tests for H1N1 in the case of Category 'A'& 'B'were required in terms of the Govt. Guidelines," opined the top consumer court.

Therefore, the NCDRC bench held Fortis Hospital negligent for not conducting the H1N1 test promptly and noted, "The omission on the part of the Hospital therefore to have the patient tested for H1N1 promptly would certainly be contrary to the requirements under the aforesaid Guidelines, and therefore does constitute actionable "medical negligence"."

With this observation, the Apex Consumer Court set aside the order of the State Commission and upheld the District Forum's order. "The Ld. State Commission had therefore acted erroneously in not considering the applicability of the guidelines pertaining to the category 'C' individuals, which were clearly applicable to the father of Complainant No. 1, and had thus acted with material irregularity in setting aside the well-reasoned decision of the Ld. District Forum," the NCDRC bench mentioned in the order.

Restoring the order of the District Consumer Court, the NCDRC bench directed the Fortis Hospital and its treating Nephrologist to comply with the directions of the District Forum within a month from the date of the order. The bench mentioned in the order, "The Respondents/Opposite parties are accordingly directed to comply with the directions of the District Forum within a month from this date failing which any outstanding payments shall attract interest @ 12% p.a."

Ref.: *https://medicaldialogues.in/news/health/medico-legal/h1n1-test-not-promptly-conducted-on-symptomatic-patient-consumer-court-finds-fortis-hospital-nephrologist-guilty-of-negligence-117757 Accessed on 23/09/2023*

Right Ovary Missing Post Cystectomy: Forum Directs Delhi Gynaecologist To Pay Rs 5L

Compensation For Negligence

New Delhi: Holding a gynaecologist associated to Shri Mool Chand Khairati Ram Hospital negligent in her service as a doctor, the District Consumer Disputes Redressal Forum-II in New Delhi has directed her to pay compensation of Rs 5 lakh along with a litigation cost of Rs 50,000 to a patient whose right ovary was removed instead of operating the left ovarian cyst, causing permanent disability, hormonal imbalances, and psychological distress.

The bench of Monika A Srivastava, President, Kiran Kaushal, Member, U K Tyagi, Member observed that the doctor though possessed of requisite skills has not exercised the skill as per the competency.

Background- This case which began in 2001 concerns a patient, who filed a consumer complaint against Shri Mool Chand Khairati Ram Hospital, the gynaecologist and the United India Insurance Company alleging medical negligence during Endoscopic Ovarian Cystectomy.

The patient sought Rs 5 lakhs in damages for a series of physical and emotional traumas she experienced. She alleged permanent disablement, mental anguish, extensive nursing and hospital expenses, and deprivation of her role as both a wife and a mother due to negligence on the part of the hospital.

She had initially consulted the hospital due to gynecological issues, particularly a cyst in her left ovary.

The Allegations- The patient claimed that Shri Mool Chand Khairati Ram Hospital, specifically the gynaecologist, had recommended surgery to remove the ovarian cyst. However, the hospital mistakenly removed her right ovary instead of addressing the left ovarian cyst.

As a result, she suffered permanent disability, hormonal imbalances, and psychological distress. She further alleged that the hospital and its staff attempted to conceal their mistake by manipulating documents, including prescriptions and laparoscopic reports. She presented evidence, including ultrasound reports and histopathological examinations, suggesting that both her ovaries were intact before the surgery.

The Hospital and the Doctor's response- Meanwhile, the hospital denied the allegations, stating that the left ovary was already missing and that the surgery had been conducted correctly.

The doctor argued that the complainant had concealed fact and did not file the medical papers with regard to the laparoscopic surgery undertaken by her about ten years back in 1990. and therefore it is manifested that the right ovary of the patient was already removed before she was operated by her.

She further submitted that the mention of Rt in histopathological was wrong. She explained that this happened as the Resident Doctor had wrongly recorded that cyst was removed from the right ovary (instead of left ovary) and left ovary (instead of right ovary) was missing.

The Medical Evidence- The case hinged on medical evidence, particularly ultrasound reports conducted over several years. These reports contradicted the hospital's assertion that the left ovary was missing, as they consistently showed the presence of both ovaries. Furthermore, histopathological reports indicated the removal of the right ovary during surgery, further complicating the hospital's contention.

The Legal Battle- The case went through multiple stages, with the District Consumer Disputes Redressal Forum initially ruling against the patient in 2005. However, this decision was overturned by the State Commission in 2009, leading to a fresh hearing. The hospital's counsel relied heavily on the notion that the patient had hidden her medical history, specifically her surgery in 1990.

Expert Opinions- To resolve the case,

expert opinions were sought. Safdarjung Hospital's experts could not definitively confirm the presence of the right ovary at the time of surgery due to contradictory evidence. This further led to confusing the case.

The Order- After considering the evidence and arguments from both parties, the District Commission found discrepancies in the statements provided by the hospital and the doctor. The Forum noted that; "It has also seen the prescription provided by the doctor with over writing, left ovary cyst is made as right ovary cyst and overwriting is also seen in another parts of the prescription where L is cut and R is written but the important part is that it still mentions cystectomy and not removal of right ovary" "Although the doctor has given an explanation that it is on account of the mistake of resident doctor that the left ovary is mentioned as right ovary yet this fact is inexplicable in view of the fact of sonography reports of the complainant pertaining to the years prior to the surgery of the complainant conducted at Shri Mool Chand Khairati Ram Hospital in the year 2001."

Referring to case of Jacob Mathew vs. State of Punjab and other relevant cases in the Hon'ble Supreme Court, the Forum reiterated that doctors are expected to exercise a reasonable degree of care, skill, and knowledge while treating patients. Failure to meet this standard amount to medical negligence.

It further said that, "The prescription given by the doctor apart from overwriting of Lt to Rt but apart from overwriting, it is mentioned cystectomy and not removal of right ovary. This coupled with the fact that past sonography reports after the first surgery of the complainant in 1990 indicate that both the ovaries of the complainant were present whereas the later sonography reports after the surgery was performed by the doctor in 2001 indicate that the right ovary is missing therefore, we opine that the doctor has been negligent in conducting the surgery of the complainant based on the documentary proof filed on record. It is also noted that the doctor in her reply of legal notice had stated that the left ovary was already missing which is in contradiction to her averments made in her reply to the complainant"

The Commission placed its reliance on the expert report of Safdarjung Hospital and concluded that; "There is definite contradiction in the statements made by the doctor relating to the presence of left/right ovary of the complainant."

Based on the evidence and case laws, the District Commission, subsequently, held the hospital and the doctor liable for negligence and ordered them to pay Rs 5 lakhs as compensation to the complainant for the physical and mental suffering caused by their medical negligence. Additionally, they were directed to bear the legal expenses incurred by the complainant. It said; "In the present case the doctor though possessed of requisite skills has not exercised the skill as per the competency therefore this commission is off the view that the professor is negligent in her service as a doctor. The doctor is directed to pay to the complainant a sum of Rs 5 lakh as compensation along with Rs 50,000 as cost of litigation within three months from the date of this order failing which the doctor shall be liable to pay an additional sum of Rs 2 lakhs to the complainant till payment is made. It is open for the doctor to recover this amount from op 4 as a valid indemnity policy which was in place at the relevant time."

Ref.: *https://medicaldialogues.in/news/health/medico-legal/right-ovary-missing-post-cystectomy-forum-directs-delhi-gynaecologist-to-pay-rs-5l-compensation-for-negligence-117478 Accessed on 23/09/2013*

□■□

Indian Medico- Legal Ethics Association
Professional Assistance / Welfare Scheme

1) The scheme shall be known as PAS **"Professional Assistance Scheme".**
2) **The life member of IMLEA, IAP& PAI** shall be the beneficiary of this scheme on yearly basis. The member can renew to remain continuous beneficiary of this scheme by paying renewal fees every year. The scheme shall assist the member ONLY as far as the medical negligence is concerned.
3) This scheme shall be **assisting the members** by:
   - **i) Medico-legal guidance** in hours of crisis. A committee of subject experts shall be formed which will guide the members in the hours of crisis.
   - **ii) Expert opinion** if there are cases in court of law.
   - **iii) Guidance of legal experts.** A team of Legal & med-legal experts shall be formed which will help in guiding the involved members in the hours of crisis.
   - **iv) Support of crisis management committee** at the city / district level.
   - **v) Financial assistance** as per the terms of agreement.
4) The fund contribution towards the scheme shall be decided in consultation with the indemnity experts. The same will depend on the type & extent of practice, number of bed in case of indoor facilities & depending upon the other liabilities.
5) The financial contribution towards the scheme shall be as follows:

Admission Fee(One Time, non-refundable)	
Physician with Bachelor degree	Rs. 1000
Physician with Post graduate diploma	Rs. 2000
Physician with Post graduate degree	Rs. 3000
Super specialist	Rs. 4000
Surgeons, Anesthetist etc	Rs. 5000
Surgeons with Super specialist qualification	Rs. 6000

S. no	Qualification/ Specialty	Ten Lakhs	Twenty Lakhs	Fifty Lakhs	One Crore	Two Crore
1	Physician / doctors with Bachelor degree and/or OPD Practice	400 (625)	700 (1250)	1500 (3125)	2800 (6250)	5500 (12500)
2	Physician / doctors with PG degree &/ or Indoor Practice	700 (1250)	1300 (2500)	3000 (6250)	5500 (12500)	10,000 (25000)
3	Physician / doctors with Practice of Surgery	1300 (2500)	2400 (5000)	5500 (12500)	10,000 (25000)	19,000 (50000)
4	Plastic Surgeons, Anesthetist etc	1800 (3750)	3500 (7500)	8000 (18625)	14,000 (37250)	27,000 (75000)

Figure in Brackets ( ) indicates amount if you directly do through Insurance Company

- The amount includes the charges of New India Assurance company charges as well as the charges of Human Medico Legal Consultants Company.
- This scheme is for **AOY** (Any one year Limit); amount shall be calculated on individual to individual basis for extra **AOA** (Any one Accident limit) assistance.
- 5 lacs up-gradation after 3 years (for policies 25-50 lacs).
- 5% discount + 10 lacs up-gradation after 5 years (for policies 50 lacs – 1 Cr).
- 10% discount + 20 lacs up-gradation after 10 years (for policies >1 Cr).
- Physician / doctors visiting other hospitals shall have to pay 5% extra
- The additional charges 15 % for those working with radioactive treatment.
- The additional charges can be included for other benefits like OPD/ indoor attendance, instruments, fire, personnel injuries etc

PAS for Hospital Establishments:

Annual Fee for Hospitals Establishment
Rs/- 300 per lakh + 1 rupee/OPD P atient (total OPD in one calendar year) – 5 rupee per IPD patient (total admissions in one calendar year) + GST 18 %+ 7.5 % of basic premium for Unqualified Staff.
The exact calculations will depend upon number of OPD & Indoor patients as per the actual number given by the hospital. Medical colleges/ Corporate hospitals after discussing with hospital administration.
This scheme is for**AOY** (Any one year Limit); amount shall be calculated on individual to individual basis for extra**AOA** (Any one Accident limit) assistance.
5% concession on payment for three years & 10% concession for payment for five years on individual to individual basis.

6) The hospital can become the member of this scheme only if all the members associated with the hospital have their personal professional indemnity under the scheme.
7) A trust / committee / company/ society shall look after the management of the collected fund. The scheme shall initially be run in collaboration with the New India Assurance or National Insurance Company.
8) The Financial assistance will be like Medical Indemnity welfare scheme, where indemnity part shall be covered by government / IRDA approved companies or any other private company.
9) ***The amount shall be deposited in the Central Indemnity Reserve Fund (CIRF) of the association. The association shall be responsible only for the financial assistance.*** Any compensation/cost/damages awarded by judicial trial shall be looked after by government / IRDA approved insurance companies or any other similar private company.
10) Experts will be involved so that we have better vision & outcome of the scheme.
11) The payment to the experts, Legal & med-legal experts shall be done as per the pre-decided remuneration. Payment issues discussed, agreed and processes shall be laid down by the members of these scheme.
12) If legal notice / case are received by member he should forward the necessary documents to the concerned person.
13) Reply to the notice/case should be made only after discussing with the expert committee.
14) A discontinued member if he wants to join the scheme again will be treated as a new member.
15) ***The litigations involving criminal negligence cases shall be covered as per the agreement with New India Assurance Company. The scheme will NOT COVER the damages arising out of fire, malicious intension, natural calamity or similar incidences.***
16) All the doctors working in the hospital (Junior, Senior, Temporary, Permanent etc) shall be the members of the IMLEA, if the hospital wants to avail the benefits of this scheme.
17) The scheme can cover untrained hospital staff by paying extra amount as per the decision of expert committee.
18) A district/ State/ Regional level committee can be established for the scheme.
19) There will be involvement of electronic group of IMLEA for electronic data protection.
20) Flow Chart shall be established on what happens when a member approaches with a complaint made against him or her [Doctors in Distress (DnD) processes].
21) **Telephone Help Line:** setting up and manning will be done.
22) Planning will be done to start the **Certificate / Diploma / Fellowship Course on med-leg issues** to create a pool of experts.
18) Efforts will be made to spread preventive medico-legal aspects with respect to **record keeping, consent and patient communication** and this shall be integral and continuous process under taken for beneficiary of scheme by suitable medium. □■□

Instructions to authors for publication in JIMLEA

JIMLEA is an online peer reviewed journal with ISSN registration. It was indexed with **IP Indexing** in the year 2019. You can contribute articles, original research work / paper, recent court judgement or case laws related to medico-legal issues, ethical issues, professionalism, doctor-patient relationship, communication skills, medical negligence etc in JIMLEA. The content of the journal is also freely available on-line to all interested readers.

Authors are requested to contribute articles for the journal and read the following instructions carefully. It is advisable to follow the instructions strictly so as to maintain uniformity in content display. Submissions not complying to these instructions may not be considered for publication in the journal.

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Letter to the Editor: These should be short and decisive observations which should preferably be related to articles previously published in the journal or views expressed in the journal. They should not be preliminary observations that need a later paper for validation.

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1) Cogo A, Lensing AWA, Koopman MMW et al - Compression ultrasonography for diagnostic management of patients with clinically suspected deep vein thrombosis: prospective cohort study. BMJ 1998; 316: 17-20.

Reference from book:

2) Handin RI- Bleeding and thrombosis. In: Wilson JD, Braunwald E, Isselbacher KJ, Petersdorf RG, Martin JB, Fauci AS, et al editors—Harrison's Principles of Internal Medicine. Vol 1. 12th ed. New York: Mc Graw Hill Inc, 1991: 348-53.

Reference from electronic media:

3) National Statistics Online - Trends in suicide by method in England and Wales. 1979-2001. www.statistics.gov.uk/downloads/theme_health /HSQ 20.pdf' Accessed Jan 24, 2005.

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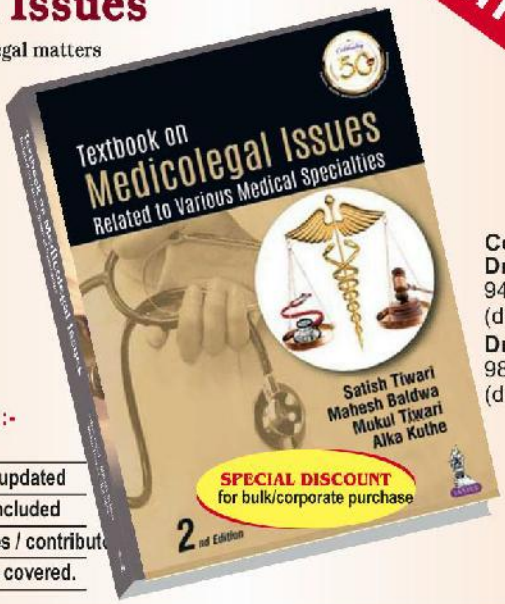

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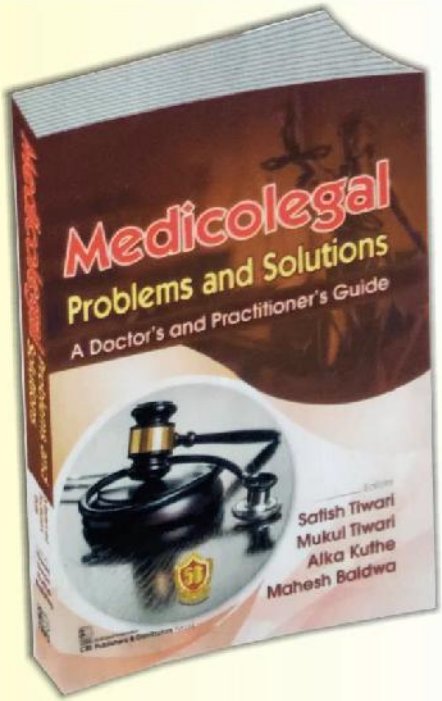

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