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# Code of Conduct for Medical Professionals: Legal Considerations

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Medical Law

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# 1. INTRODUCTION

Medical Profession is distinguished from other professions on account of involvement of human lives. Medical professionals owe a special duty of care to save the lives of living beings and to relieve them from pain and suffering. Medical ethics and code of conduct emphasize the priority of this moral duty above all the other considerations of personal interests and private gains.

Medical Professionals are obliged to abide by strict Codes of Conduct, which embody high ethical standards, values, protection of the patients' interests, and the requirement to uphold professional integrity.

## 2.1 Background

The Indian Medical Council Act 1956 (the “**IMC Act**”), per Sections 20 and 33(m), empowered the Medical Council of India (the “**MCI**”) to make regulations for laying down the standards of professional conduct and code of ethics to be observed by medical practitioners. In 2002, the Medical Council of India in exercise of the powers conferred by the IMC Act made the regulations relating to the professional conduct, Etiquette and Ethics for registered medical practitioners.

In 2019, the Union government enacted the National Commission Act (the “**NMC Act**”) and repealed the IMC Act. Section 57(zd) of the NMC Act grants power to the National Medical Commission (the “**NMC**”) to make

regulations for regulating professional conduct and promoting medical ethics. The new regulations for professional conduct and medical ethics have not been made till date and therefore, the 2002 regulations made by the MCI still holds the field by virtue of Section 61 of the NMC Act.

## 2.2 Medical Profession – A Concurrent List Subject

The Medical Profession comes under the Concurrent List of the Indian Constitution at entry no. 26 under the heading – *Legal, medical and other professions.*, implying thereby that both, the Union as well as the State Government, can make laws to regulate the medical profession. However, in case of a conflict between the Union legislation and the State legislation, the Union legislation will prevail only to the extent of such conflict.

In view of the above, the NMC Act has put in place a federal regulatory structure for regulation of medical profession. The State Medical Councils are formed under Section 30 of the NMC Act. The NMC Act confers power upon the State Medical Councils to take disciplinary actions in respect of any professional or ethical misconduct by a registered medical practitioner or professional. However, the state medical councils have to act in accordance with the regulations made under the NMC Act.

## 2. LEGAL FRAMEWORK IN PLACE

Medical Profession in India is regulated by the Central as well as the State laws.

A new Central law has been recently enacted, thereby revamping the old regulatory regime. Medical Education is primarily dealt with by the central law only whereas the professional conduct of medical professionals is dealt by both the central and the state laws.

States have their own state medical councils. The main function of the state councils is to enrol the medical professionals and to ensure professional and ethical conduct by these enrolled medical professionals. Only enrolled medical professionals with appropriate qualifications are allowed to practice the modern medicine or surgery.

### 2.1 The National Medical Commission Act, 2019

The National Medical Commission Act (“**NMC Act**”) was enacted in the year 2019, after the repeal of the Indian Medical Council Act, 1956. The NMC shall be the successor in interest to the MCI including its subsidiaries or owned trusts and all the assets and liabilities of the Medical Council of India shall be deemed to have been transferred to the Commission.

The Act was enacted with an intent to restructure and revamp the regulatory system of medical education and medical practice and to reform the Medical Council of India. The Department-Related Parliamentary Standing Committee on Health and Family Welfare in its Ninety-second Report has recommended the restructure in accordance with the regulatory structure suggested by the Group of Experts, chaired by Dr. Ranjit Roy Choudhary. The Hon'ble Supreme Court has also directed the Central Government to consider and take appropriate action on the recommendations of the Roy Choudhary Committee.<sup>1</sup> In this background, the NMC Act was enacted.

The NMC Act provides for constitution of four Autonomous Boards, namely,

- (a) the Under-Graduate Medical Education Board;
- (b) the Post-Graduate Medical Education Board;
- (c) the Medical Assessment and Rating Board; and
- (d) the Ethics and Medical Registration Board.

The NMC Act empowers the National Medical Commission (the “**NMC**”) to lay down policies and codes of conduct to ensure observance

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<sup>1</sup> Modern Dental College and Research Centre & Ors. vs. State of Madhya Pradesh & Ors., Civil Appeal No. 4060 of 2009 (order dt. 02.05.2016)

of professional ethics in the medical profession.<sup>2</sup>

## 2.2 State Medical Council Laws

The NMC Act asks states to establish a State Medical Council within three (3) years from the date of commencement<sup>3</sup> of the NMC Act.

All the States in India have constituted the State Medical Councils under their respective State acts. In addition, the Union Territory of Delhi also has a medical council in the name of Delhi Medical Council, formed under the Delhi Medical Council Act, 1997.

The State Acts empower the State Medical Council to take disciplinary action against medical professionals for professional or ethical misconduct. However, state councils have to act according to the regulations and guidelines framed under the NMC Act.

## 2.3 The IMC (Professional conduct, Etiquette and Ethics) Regulations, 2002

The Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 (the “**Ethics Regulations**”) were framed under the erstwhile Medical Council of India under the now repealed, the Indian Medical Council Act. However, these regulations continue to be in force and operate until new standards are specified under the NMC Act.<sup>4</sup> Till date, no regulations concerning professional ethics have been framed by the NMC and therefore Ethics Regulations of 2002 continues to hold the field.

The Union Territory of Delhi had also laid down Delhi Medical Council (professional conduct, etiquette and ethics) Regulations 2000, however, any provision of these regulations in conflict with the regulations made by the NMC could not be enforced.<sup>5</sup>

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<sup>2</sup> Section 10 of the NMC Act, 2019

<sup>3</sup> The NMC Act came into force on 25.09.2020

<sup>4</sup> Section 61(2) of the NMC Act

<sup>5</sup> Section 30(2) of the NMC Act provides that the state medical council, while taking disciplinary

actions in respect of any professional or ethical misconduct by a registered medical professional, has to act only in accordance with the regulations and guidelines framed under the NMC Act.

## 3. REGULATORY BODIES

### 3.1 National Medical Commission

The apex regulatory body for medical professionals - the Medical Council of India (“MCI”) was dissolved by the NMC Act and the National Medical Commission (“NMC”) was constituted in its place.

The NMC consists of a chairperson, ten ex-officio members and fourteen part-time members. Only five part-time members are chosen from amongst the elected members of the State Medical Councils.

It is evident from the constitution of the NMC and the Autonomous Boards that the elected members are in minority, as compared to the erstwhile MCI, which was primarily an elected body. The effect of this transition is yet to be seen but there is an apprehension in the medical community that the code of conduct would be more strictly enforced by the NMC.

### 3.2 Ethics and Medical Registration Board

An Autonomous Board has been constituted by the government, as envisaged under the NMC Act. The functions of the Board are to –

- (a) maintain a national register of all licensed medical professionals,

- (b) regulate conduct of medical professionals and to promote medical ethics, in association with the state medical councils, and
- (c) exercise appellate jurisdiction in respect of disciplinary actions taken by the State Medical Council.

Each Autonomous Board consists of a President and two whole-time Members and two part-time Members. All the members (except one) of the Board are appointed on the recommendations of a Search committee. One part-time member is chosen from amongst the elected members of the State Medical Councils.

### 3.3 State Medical Councils

The National Medical Council Act lays down that each State Government shall establish a State Medical Council if no such Council already exists. The state medical council can take disciplinary action against medical professionals in accordance with the relations and guidelines framed by the NMC. Furthermore, the state medical councils are required to maintain and update a register of medical practitioners enrolled within its territory.

## 4. KEY PROVISIONS OF THE ETHICS REGULATIONS, 2002

Ethics Regulations, in order to define certain standards to uphold the dignity and honour of the profession, lay down several duties and responsibilities of the licensed medical professionals.

The regulations stress that the prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration.

The MCI's Code of Ethics Regulations provide for several duties and responsibilities of the Physicians towards their patients, towards people in general, towards each other etc.

Following are the duties and responsibilities enunciating the code of conduct for medical professionals as per the regulations framed under IMC Act.

### 4.1 License and Qualifications Mandatory to practice modern medicine or surgery

In India, a doctor having qualification recognised by Medical Council of India and registered with Medical Council of India/State Medical Council (s) is allowed to practice Modern system of Medicine or Surgery. A person obtaining qualification in any other system of Medicine is not allowed

to practice Modern system of Medicine in any form.

A medical professional should not claim to be specialist unless he has a special qualification in that branch.

### 4.2 Maintenance of Medical Records

A medical professional or a hospital is required to maintain the medical records pertaining to the indoor patients for a period of three (3) years from the date of commencement of treatment. The MCI also prescribes a standard proforma for such records.<sup>6</sup> It is also advisable to preserve the record for even outdoor patients for a period of three (3) years.

If the patient, the authorized attendant or the legal authorities requests for any medical record, the request has to be acknowledged by the medical professional or the hospital, as the case may be. The requisite documents containing the medical records have to be issued within seventy-two (72) hours of the request.

Non-maintenance and/or non-issuance of the medical records within the prescribed period amounts to professional misconduct and renders the medical professional liable for disciplinary action.

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<sup>6</sup> Appendix 3 of the Ethics Regulations

### 4.3 Issuance and signing of medical certificates, records or other documents

Registered medical practitioners are in certain cases bound by law<sup>7</sup> to give, or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes etc. It has to be ensured by the medical professional that the information in such certificates, records is not untrue, misleading or improper. Breach of this rule would make the medical professional liable for cancellation of the license.

Furthermore, while issuing any certificate, it is required to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. One copy of the certificate has to be retained by the medical professional.

A medical professional is also required to maintain a Register of Medical Certificates which should contain full details of the issued certificates.

### 4.4 Display of important information

A medical professional is required to display the registration number accorded to him by the State Medical Council / Medical Council of India in the clinic, in all his prescriptions,

certificates, money receipts given to the patients. At the same time, it is improper for a medical professional to display anything other than his name, qualifications, titles and name of his speciality, registration number and the name of the State Medical Council with which one is registered.

It is improper to affix a sign-board on a chemist's shop or in places where the medical professional does not reside or work.

A medical professional is also required to display his fees and other charges on the board of his chamber and/or the hospitals he is visiting.

Violation of these provisions amounts to professional misconduct and could lead to disciplinary action.

### 4.5 Prescription and Professional Fees

A medical professional shall write his name and designation in full along with registration particulars in his prescription letter heads. The prescription should also make clear if the medical professional himself dispensed any medicine.

A medical professional should not prescribe or dispense secret remedial agents of which he does not know the composition. All drugs prescribed by a medical professional should always carry a proprietary formula and a clear name.

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<sup>7</sup> Appendix 4 of the Ethics Regulations



Use of generic name of drugs. Regulation 1.5 of the Ethics Regulations provides that every medical professional should, as far as possible, prescribe drugs with generic names and he / she shall ensure that there is a rational prescription and use of drugs. However, this regulation was amended in 2016 and the term “as far as possible” was deleted<sup>8</sup>, thereby making it mandatory for medical professionals to prescribe the drugs by their generic names only. The MCI also issued a circular in the year 2017 directing all registered medical practitioners to comply with the Regulation 1.5 without fail.<sup>9</sup>

#### 4.6 Diagnosis and Prognosis

A medical professional should neither exaggerate nor minimize the gravity of a patient’s condition. He should ensure himself that the patient, his relatives or his responsible friends have such knowledge of the patient’s condition as will serve the best interests of the patient and the family.

The disclosure of the opinion to the patient or his relatives or friends is not mandatory and the differences of opinion should not be divulged unnecessarily except when there is irreconcilable difference of opinion in which case the circumstances should be frankly and impartially explained to the patient or his relatives or friends so that they can seek further advice if they so desire.

A medical professional can make subsequent variations in the treatment if any unexpected change occurs, but at the next consultation, reasons for the variations should be discussed/ explained.

#### 4.7 Refusal to treat a patient

Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavour to add to the comfort of the sick by making his visits at the hour indicated to the patients. A physician advising a patient to seek service of another physician is acceptable, however, in case of emergency a physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient. However, for good reason, when a patient is suffering from an ailment, which is not within the range of experience of the treating physician, the physician may refuse treatment and refer the patient to another physician.

A physician is free to choose whom he will serve. He should, however, respond to any

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<sup>8</sup> Gazette Notification No.MCI-211(2)/2016(Ethics)/131118 dated 21.09.2016

<sup>9</sup> Medical Council of India Circular No. MCI-211(2)(Gen.)/2017-Ethics/104728 dated 21.04.2017

request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family.

#### 4.8 Advertising by medical professionals

Soliciting of patients by medical professionals or hospitals is considered unethical. A medical professional should not advertise, publicise or invite attention towards his professional position, skill, qualification, achievements, attainments, specialities, appointments, associations, affiliations or honours.

However, a medical practitioner is permitted to make a formal announcement in press regarding the following:

- a) On starting practice.
- b) On change of type of practice.
- c) On changing address.
- d) On temporary absence from duty.
- e) On resumption of another practice.
- f) On succeeding to another practice.
- g) Public declaration of charges.

#### 4.9 Promotion of drugs, devices, etc.

A medical professional should not endorse any other product, medicine, drug, device, etc. and should not allow his/her photo, name or signature to be used for such advertisements. Also, a medical professional

should not give any approval, recommendation, endorsement, certificate, report or statement with respect of any drug, medicine, device, etc.

However, a medical professional can present or publish any study conducted on the efficacy of such products to appropriate scientific bodies or scientific journals in a proper way.

#### 4.10 Rebate or commission on referral

A medical professional should neither solicit or receive nor give or offer any gift, commission, rebate, etc. for referring or recommending any patient for any treatment. However, payment of salaries by a qualified physician to other duly qualified person rendering medical care under his supervision is permitted.

Medical professionals are not allowed to use touts or agents for procuring patients

#### 4.11 Consent

A medical professional should, before performing an operation, obtain consent in writing from the husband or wife, parent or guardian (in case of minor), or the patient himself/herself as the case may be. In cases where the operation may result in sterility, the consent of both the husband and wife is needed. In cases of invitro fertilization or artificial insemination, informed written consent of the female patient and her spouse as well as the donor is mandatory.

The consent should be an informed consent, meaning thereby that the patient or his relatives have to be explained all the pros and cons of the operation, the risk involved and the need for the operation. The consent should be in writing but merely signature on standard consent form is not sufficient. The consent form should be duly filled up before taking signature. The patient or his attendant should be properly informed about the content of the consent form in a vernacular language and thereafter consent should be recorded through the signature of the patient or the attendant on the duly filled consent form. With the increasing cases of medical negligence ending up in litigation, it is advisable to video-record the entire conversation at the time of signing of the consent form. This video recorded consent can be stored for a duration of 2 years and can thereafter be discarded for non-disputed cases.

The consent of the patients is also required for publication of their case reports or photographs in any medical or other journal. However, if the identity of the patient is not to be disclosed, the consent is not needed.

#### 4.12 Relationship with pharmaceutical and allied health sector industry

A medical professional can work for pharmaceutical and allied healthcare industries in advisory capacities, as consultants, as researchers, as treating

doctors or in any other professional capacity. A medical professional can also carry out, participate in, or work in research projects funded by pharmaceutical and allied healthcare industries, subject to certain conditions.<sup>10</sup>

However, a medical professional should not compromise with his professional autonomy while dealing with pharmaceutical and allied healthcare industry. A medical professional is also barred from accepting gifts, travel facilities, hospitality, cash or monetary grants, etc. from any pharmaceutical or allied health care industry.

The Ethics Regulations also prescribe various actions for violation of regulations while dealing with pharmaceutical industry. The penalty is dependent on the gravity of the violation.

#### 4.13 Sex Determination

Sex determination undertaken with an intent to terminate the life of a female foetus developing in her mother's womb (without other absolute indications for termination of pregnancy as specified in the Medical Termination of Pregnancy Act, 1971) is considered as an act of professional misconduct under the Ethics Regulations. Termination of a pregnancy in violation of provisions of Medical Termination of Pregnancy Act, 1971 is a criminal offence under Indian Penal Code.

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<sup>10</sup> Regulation 6.8 of the Ethics Regulations

Section 6 of the Pre-Conception and Pre-Natal Diagnostic Techniques (the “PC&PNDT Act”) Act, 1994 also prohibits the pre-natal determination of sex. The PC&PNDT Act makes it an offence punishable with imprisonment up to three years and with fine up to ten thousand rupees.

#### 4.14 Prohibition on running a pharmacy

A medical professional should not run an open shop for sale of medicine for dispensing prescriptions prescribed by doctors other than himself or for sale of medical or surgical appliances.

## 5. DISCIPLINARY PROCEEDINGS AGAINST MEDICAL PROFESSIONALS

State Medical Councils are empowered to take disciplinary actions in respect of any professional or ethical misconduct by a registered medical practitioner or professional. The State Medical Councils have to act as per the procedure framed by the NMC through regulations or guidelines.<sup>11</sup> Till date, the NMC has not come up with the regulations to prescribe the manner of taking disciplinary action. Therefore, state medical council can follow the procedure provided for in the state act or rules or regulations framed thereunder. Needless to say, the procedure so chosen should comply with the basic principles of natural justice.

### 5.1 What constitutes Professional misconduct?

Chapter 7 of the Ethics Regulations describes and elucidates the acts, the commission or omission of which, would constitute professional misconduct. Violation of any of the regulations covered in Section 4 of this report amounts to professional misconduct. There are various other grounds like adultery, improper conduct, conviction by court of law, etc. which would also constitute professional misconduct.

Moreover, it is important to note that instances of professional misconduct covered in the Ethics regulations do not constitute a complete list of the infamous acts which calls for disciplinary action. The Ethics and Registration Board and State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a medical professional.

It is therefore important that the Ethics regulations are followed in letter and spirit.

### 5.2 Consequences of Professional Misconduct

A complaint can be filed before state medical council or the Ethics and Medical Registration Board (till the time the state medical council is not established in any state). The state medical council thereafter would hold an enquiry and give an opportunity of hearing to the medical professional. The medical professional can appear in person or through a pleader/counsel. The decision on the complaint as to be taken within a time limit of six (6) months. If the medical professional is found to be guilty of committing professional

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<sup>11</sup> Section 57(2) (zh) empowers the NMC to make regulations in this regard.

misconduct, the appropriate state medical council can award punishment.

### 5.3 Quantum of punishment

The state medical council, in cases of professional misconduct, can order–

- a) Imposition of monetary penalty;
- b) Removal of the name of medical professional from the register, implying thereby the cancellation of the license to practice;
- c) Removal of the name of medical professional from the register for a specified period, meaning thereby the suspension of license for a specified period.

The deletion from the Register has to be widely publicized in local press as well as in the publications of different Medical Associations/ Societies/Bodies.

During the pendency of the complaint, the state medical council can restrain the medical professional from performing the procedure or practice which is under scrutiny.

### 5.4 Appeal

An aggrieved medical professional can file an appeal before the Ethics and Medical Registration Board. A medical professional aggrieved with the decision of the Ethics and Medical Registration Board can file second appeal to the NMC within 60 days of communication of such decision. The order of NMC is final and binding unless it is challenged by way of a writ petition before the constitutional courts.

There appears to be a drafting error because the right to appeal has been given only to the aggrieved medical professional and not to the complainant.



Graphical representation of appeal mechanism against an order of state medical council

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