

Editorial...

New Draft of National Medical Commission, Registered Medical Practitioner (Professional Conduct) Regulations, 2022: Critical Analysis

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The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 was published in Part III, Section 4 of the Gazette of India, dated 6th April 2002, to regulate the Professional Conduct, Etiquette and Ethics of Registered Medical Practitioners (RMP), which was known as the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The said regulation has defined and described different regulations in eight chapters for the RMP. It has become one of the most trusted and followed documents for medical practitioners around the country to avoid any unnecessary confrontation with the law enforcement authority, administration and other National and International regulatory bodies while dealing with patients, clinical research and human experimentation, etc. As a reformatory measure to amend this regulation, the National Medical Commission (NMC), on 23rd June 2022, put in the public domain draft of the National Medical Commission, Registered Medical Practitioner (Professional Conduct) Regulations, 2022 for public/stakeholders' comments within one month, i.e., till 22nd June 2022. There have been many resentments about the contents of this draft among various Medical Associations of India in particular and medical professionals. This editorial aims to highlight a few of the lackings and dues.

Many professional associations, including the Indian Academy of Forensic Medicine (IAFM), the largest national forensic medicine fraternity association, deliberated on this call among their members and submitted their comments. IAFM plays a significant role in maintaining honour and dignity and upholding the medical profession's interest. Similarly, the Indian Medical Association (IMA), the largest professional organization of modern medicine professionals, has also participated in this view.

The practice of medicine, unlike other professions, is unique because it deals with persons when they are most vulnerable. Patients who depend heavily on the doctor's knowledge and skill are often forced to accept the doctor's opinion because of their ignorance regarding medical care and lack of other options at that moment.

The doctor-patient relationship is, thus, loaded heavily in favour of the doctor. The paradox of this relationship is addressed by medical ethics, which regulates the behaviour of medical professionals. Medical ethics is the internal regulatory mechanism which guarantees the patient that a doctor would strive to do his best to ensure patient welfare above any other personal interest. Maintaining the sanctity of this doctor-patient relationship is paramount, which depends heavily on trust.

I am of the firm view that Professional Associations like IAFM, IMA, etc., is a huge responsibility to establish and promote the highest possible standards of ethical behaviour and care by physicians.

Critical Comments of IAFM

Comments about Title: It was suggested on behalf of IAFM that the previous title, i.e., the Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002 is more informative and appealing than the Draft title posted in the public domain. Hence it should be retained as before.

Comments about the structure of Draft: It was found that previous Ethical Regulations, 2002 had Eight Chapters with more clarity than Draft Ethical Regulations, 2022, which has merely Six Chapters without clear boundaries and classification, creating more confusion than a clear understanding of the aims and objectives of

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the need for the new document. So, It should be revised again. The success of enforcement of any statutory provision depends on how it spells out its contents for all stakeholders.

Comments about Preamble: There is no preamble of draft Ethical Regulations, 2022, except for a few provisions under which it was drafted. The preamble should contain some background on the need for replacing Ethical Regulations, 2002 and the statement of objects of Ethical Regulations, 2022.

Comments about Definitions: Many definitions lack clarity and have been presented just as a description, which may confuse all concerned in the future and needs a clear revision.

There is a need to include more missing definitions like Advertisement, Endorsement, Medical Accident, Medical Error, Medical Malpractice, Medical Mishap, Professional Incapacity, Professional Incompetence, Professional negligence, Gross Negligence, Civil Negligence, Criminal Negligence (*Reference: MCI E.C. Minutes: 25.10.2017, Item No.7 Final Report of Study Group*).

Comments about Guidelines: Guidelines on Criminal Medical Negligence in terms of Hon'ble Supreme Court Judgment in case of Title: Jacob Mathew vs Union of India and Ors., 2005 and subsequent Guidelines submitted by NMC to Ministry of Health and Family Welfare reference No. NMC/MCI/EMRB/C-12015/ 0023/ 2021/ 022426, dated: 29.09.2021, was not part of this guideline, which is a significant lacuna.

Comments about Generic Medicines: Generic medicine terminology needs detailed deliberation among medical professionals and professional associations if provisions are implemented in letters and spirits.

Comments about missing Chapter in Unethical Acts: This whole Chapter No. 6 is missing from the new Draft on Ethical Regulations, 2022, while Ethical Regulations, 2002 contains the list of following Unethical Acts: Regulation 6.1 Advertising, 6.1.2 Printing of self-photograph, 6.2 Patent and Copyrights, 6.3 Running an open shop (Dispensing of Drugs and Appliances by Physicians), 6.4 Rebates and Commission, 6.4.2 Gifts from Patients, 6.4.3 Fee Splitting, 6.7 Human Rights, 6.8 Euthanasia, etc.

Comments about missing Chapter in Professional Misconduct: Although Chapter 7 of Ethical Regulations, 2002 mentioned a list of infamous conduct in professional respect which constitutes professional misconduct on the part of the delinquent physician, missing in Chapter 6 of the new Draft of Ethical Regulations, 2022.

Comments about Penal Provisions, including alternative remedy and reformative approach:

Similarly, various recommendations by Study Groups by erstwhile MCI are not considered part of Draft Ethical Regulations, 2022.

Such as the Report of the Study Group meeting held on 10.05.2018 as part of MCI Executive Committee Minutes, dated: 26.06.2018, at Item No.9. Approval of the Report of

the Study Group meeting held on 10.05.2018 on (A) Guidelines for protecting Doctors from Frivolous or Unjust Prosecution against Medical Negligence and (B) Obligations or Doctors/Hospital Concerning Seriously III/injured Persons, not taken into consideration.

Comments about Euthanasia:

It is mentioned in New Draft that practising euthanasia shall constitute unethical conduct. However, in some instances, the question of withdrawing life-supporting devices or measures even after brain death shall be decided following the Transplantation of Human Organ Act, 1994. (End of Life Guidelines).

But there is no mention of as per guidelines of the honourable Supreme Court in Common Cause Society vs Union of India, 2018. The issue of euthanasia needs more clarity for better understanding for medical professionals.

Comments about the provision of appeals for both parties: Public Notice dated: 16th November 2017, Ref. No. V.11025/04/2017-MEP Government of India Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi, mention the provision of appeals in the following words: the person aggrieved by the decision of the State Medical Council on any complaint against a delinquent physician, shall have the right to file an appeal to the MCI within a period of 60 days from the date of receipt of the order passed by the said Medical Council. Provided that the MCI may if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period described above of 60 days, allow it to be presented within a further period of 60 days.

All medical professional associations should have visibility by having their own website, publish their own Code of Medical Ethics, customized to their field of specialization, including the general Code of Medical Ethics, and enforce these Codes among members by creating awareness among members and holding inquiries either Suo motu or on a complaint by the local committee and impose adequate penalty depending upon nature and gravity of the violation of Code of Medical Ethics. This Code of Ethics should be updated periodically by all stakeholders, and case studies should be published on the website for the awareness of all concerned.

Publication of a list of delinquent physicians found violating the Ethical Code of Conduct on the website help in generating trust of the patient community in the medical profession and, thus, outstanding service to humanity.

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