

**राष्ट्रीय आयुर्विज्ञान आयोग**  
**National Medical Commission**  
**ETHICS & MEDICAL REGISTRATION BOARD**

NMC/MCI/EMRB/C-12015 /0023 /2021/ETHICS/०२२५२६ Date: २१/१/२०२१

The Secretary  
Ministry of Health & Family Welfare  
Nirwan Bhawan, A-Wing  
Maulana Azad Road, New Delhi -110077

Sub:- Regarding specific directions issued by the Hon'ble Apex Court to frame specific "guidelines " needed for prosecution of doctors for causing death of innocent patients due to gross medical negligence or reckless therapy.

Sir,

Please refer to your letter no. Nil dated 02.03.2021 received in this office dated 15.03.2021 filed by Dr. Kunal Saha, President PBT, on the subject cited above.

GUIDELINES FOR PROTECTING DOCTORS FROM FRIVOLOUS OR UNJUST PROSECUTION AGAINST MEDICAL NEGLIGENCE

The prosecution in case of death of a person by a medical negligence by a doctor comes under section 304-A of the Indian Penal Code. Hon'ble Supreme Court in its judgment dated 05.08.2005 in the matter of Jacob Mathew Vs. State of Punjab has taken note that the investigation officers and the private complaint cannot always be supposed to have knowledge of medical sciences so as to determine whether law under section 304-A of IPC. The criminal process once initiated subjects the medical professional to serious embarrassment and sometimes harassment.

To protect doctors from frivolous or unjust prosecution against medical negligence, Hon'ble Supreme Court in the said judgment observed that stator Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the state government in consultation with the medical council of India. The Hon'ble court had also held that doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been leveled against him.) Unless arrested, the arrest may be withheld.

Further, the Hon'ble Supreme Court in the matter of Lalita Kumari Vs. State of U.P &OR's, vide Judgment dated 12.11.2013 (and partially modified on 05.03.2014) held that the preliminary inquiry in medical negligence cases should be made time bound and in any case, it should not exceed fifteen days generally and in exceptional cases of it must be reflected in the General diary entry.

The EMRB, NMC recommends to frame the following guidelines for protecting of which criminal rashness or unjust prosecution against medical negligence:

1. The prosecuting/Investigating Agency on receipt of any complaint of which criminal rashness or negligence is an ingredient against medical practitioners under the Indian Medical Council Act, 1956/NMC Act prior to making arrest refer the complaint to district Medical Council Board for its recommendations as regards the merit of the allegation of criminal rashness or negligence, contained in the complaint. The District Medical Board should be in govt. medical college and in district hospital if the district doesn't have a medical college. (The reason being the availability of all the experts with

# राष्ट्रीय आयुर्विज्ञान आयोग

## National Medical Commission

### ETHICS & MEDICAL REGISTRATION BOARD

them.) Department of forensic Medicine and Toxicology in every medical college which can be a nodal department for such board.

2. The District Medical Board on receipt of such a reference examine the allegation contained therein within two weeks from the date of its receipt and forward its recommendations to the prosecuting/ investigating Agency.
3. The prosecuting/Investigating Agency or Doctors(against whom the complaint is lodge), in case, it is dissatisfied with the recommendation of the district Medical Board may starting the reasons for such dissatisfied refer the matter to the state Medical Board for its recommendation within a period of two weeks from the receipt of recommendation of the district Medical Board.
4. The state Medical Board should have a pool of specialist from state from each specialty apart from permanent members appointed by state government. Two specialist of the concerned Branch should be included in the board on the day of receipt of the complaint or appeal.
5. The state medical board on receipt of any such reference from the prosecuting/investigating Agency would examine the mater within two weeks from the date of receipt of such reference. The state medical board shall provide reason for endorsing or rejecting the recommendation of the district medical board.
6. The prosecuting/ Investigating Agency on receipt of recommendation of the district/ state medical board may further proceed in the matter in accordance with law. However, in case arrest of a registered medical practitioner in the employment of state/Central Government is being made, the controlling officers of such medical practitioner would be informed by the prosecuting/ Investigating Agency. Likewise, in case the registered medical practitioner is engaged in private practice, the concerned state medical council, or in case there is no state medical council in that state/UT, EMRB NMC informed.
7. A doctors accused of rashness or negligence may not be arrested in a routine manner (simply because allegation has been leveled against him.) Unless the alleged negligence is of gross nature; and arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officers is satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld. Further investigating agency prior to arrest of the doctor in such cases shall place factual position for consideration of concerned superintendent of police/DCP.
8. The Boards should apply Bolam's test to facts (Standard of responsible body of medical opinion).

Further Suggestions :-

1. District Board - A) Permanent Members of board should change at least every two year.  
B) If Board is in Medical College, then one member from Civil Surgeon office should be included.

राष्ट्रीय आयुर्विज्ञान आयोग  
National Medical Commission  
ETHICS & MEDICAL REGISTRATION BOARD

2. State Board - A) Permanent Members of Board should be changed after 2 years and a member from DGHS be included.

Sincerely Yours,



(Pragya Juneja)

Sr. consultant,

Ethics Section, EMRB

Copy forwarded for information to:-

- ✓ Dr. Kunal Saha , President, People for Better Treatment – [anku@aol.com](mailto:anku@aol.com)
- Ms. Ratna Ghosh, Commercial Point (Ground Floor), 79 Lenin Sarani, Kolkata-700013