



## Editorial

### Professional Misconduct and the proposed NCHRH Bill-2011

The expression professional misconduct imports elements of fraud or dishonesty, to have been convicted of any offence implying a defect in character which makes him unfit for his profession; guilty of such improper act or conduct which brings disrepute to his profession; to have failed to provide professional services of the quality which is reasonable to expect of him. It is usually characterized by an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency; and where there had been such serious negligence that it objectively portrayed an abuse of the privileges which accompanied registration as a medical practitioner.

Recently, the Ministry of Health and Family Welfare, Government of India has put forward a bill (Bill No. LIX of 2011) called 'The National Commission for Human Resources for Health Bill- 2011' (NCHRH- 2011) before the Rajya Sabha for approval. The purpose of this bill is to promote human resources in health sector, regulation and maintenance of standard of health education throughout the country, and to ensure adequate availability of human resources in all states. To achieve this purpose, the government will establish a National Commission for human resources for health and to supervise and regulate professional councils of various sectors viz., Medical Council of India, Dental Council of India, the Nursing Council of India, the Pharmacy Council of India and the Paramedical Council of India.

With this background, I would like to draw attention of the learned readers to few of the many debatable propositions in the NCHRH- 2011 bill.

Clause 8 of part 1 of the seventh schedule mentions that "a health practitioner shall be deemed to be guilty of professional misconduct, if he accepts a position as a health practitioner previously held by another health practitioner without first communicating with him in writing". I appeal the Rajya Sabha to amend this portion as it may not always be feasible for the foreseeable reasons that when someone absconds or dies in his duty, the post will remain perennially vacant, because nobody will be there to communicate in writing. Similarly, if the first person is unwilling, or is transferred or suspended or terminated against his will/ consent, he may refuse to give so, or may delay it intentionally. If, therefore, somebody accepts a position without the first's consent, he should not be charged, as it is in no way a disgrace or dishonor to his profession.

Similarly, Clause 17 of part 1 of the seventh schedule mentions that "a health practitioner shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties". While the second part i.e., gross negligence is acceptable, the first part i.e., if he does not exercise due diligence" has been included inadvertently in the bill. In law, Negligence is signified by the terms culpa and negligentia; as contrasted with dolus or wrongful intention. Care or absence of negligentia is deligentia. As has been pointed out earlier, professional misconduct is characterized by an intentional, deliberate departure from approved standards prescribed by the professional man of good repute and integrity. Therefore not exercising due diligence should not be construed as professional

misconduct, because it excludes wrongful intention in that no result which is due to carelessness can have also intended. Also, a careful look at the all other clause of professional misconduct reveals that there has to be some degree of wrongful intention to constitute misconduct. But in the aforesaid clause negligence is included, which, by virtue of its definition excludes wrongful intention.

Lastly, Clause 1 of part II of the seventh schedule mentions that "a health practitioner shall be deemed to be guilty of professional misconduct, if he being posted in rural area, is found absent on more than two occasions during inspection by the head of the district health authority or the Chairman, Zila Parisad and the same is recommended to the national council or the state council, as the case may be, by the state government for action". Three notable omissions that needs urgent attention are 'without reasonable excuse', and 'during scheduled duty hours'. Alternatively, the term 'inspection' needs to be redefined. Any person is not expected to remain alert for a surprise inspection. If he remains alert, his competency in other required domains of work may be compromised. The other noteworthy point is the inclusion of 'Chairman, Zila Parisad'. I do not understand the rationale behind such inclusion. Unless the said omissions are not taken care of, by terming an absentia as professional misconduct, the proposed bill is trying to encroach on the professional environment of a health practitioner, and thereby making him vulnerable to a remain in a state of constant fear of professional misconduct.

Through this editorial I wish to make an appeal to all the health practitioners to think rationally, debate it before it is passed from both the Houses of the Parliament.

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