

**MEDICAL COUNCIL OF INDIA
SECTOR-VIII, POCKET- 14,
DWARKA, NEW DELHI.**

Minutes of the meeting of the Ethics Committee held on 10th May, 2011 at 10.00 A.M. in the Council Office, Sector- VIII, Pocket- 14, Dwarka, New Delhi.

Present:

1.	Dr. Arun Bal	Convenor
2.	Dr. B. K. Rao	Member
3.	Dr. Anil Dhal	Member
4.	Dr. A. K. Mahapatra	Member
5.	Dr. Chandrashekhar Shetty.	Member
6.	Mr. Amit Kumar	Legal Advisor
7.	Dr. Reena Nayyar	Deputy Secretary, MCI
8.	Mr. Shikhar Ranjan	Law Officer, MCI

01. Minutes of the last meeting of the Ethics Committee- Confirmation of.

The Minutes of the Ethics Committee meeting held on 05th April, 2011, were confirmed.

02. Minutes of the last meeting of the Ethics Committee meeting held on 08th March, 2011 - Action taken there on.

The Ethics Committee noted the action taken on the items of the minutes of meeting of the Ethics Committee held on 08th March, 2011 & 5th April, 2011.

03. (i) Appeal against order dated 13.05.2008 passed by Delhi Medical Council made by Dr.Vikas Gupta (F.No.01/2011).

(ii) Appeal against order dated 13.05.2008 passed by Delhi Medical Council made by Sh.J.R. Dhami (F.No.01/2011).

(i & ii) The Ethics Committee considered the appeal filed by Dr. Vikas Gupta and Sh. J. R. Dhami against the order dated 13.05.2008 passed by Delhi Medical Council and noted that the Delhi Medical Council vide Order dated 13.05.2008 held that case of Professional Misconduct is made out against Dr. Vikas Gupta and has imposed punishment of removal of name of Dr. Vikas Gupta from the State Medical Register of Delhi Medical Council for a period of one month and to take stringent action against Sh. J. R. Dhami

After considering all the facts and related documents, the Ethics Committee noted that the Delhi Medical Council passed the Order on 13.05.2008, around 3 years before the date of filing of an appeal i.e. 30.03.2011. The appellant has not produced any documentary evidence to show mitigating circumstances for condoned Therefore, the Ethics

Committee decided not to admit the said appeal as it is a time barred case in terms of Clause 8.8. of the Ethics Regulations namely the "Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002".

04. Appeal against order dated 21.10.2010 passed by Maharashtra Medical Council made by Dr. Anil Modak (F.No.139/2011).

The Ethics Committee considered the appeal filed by Dr. Anil Modak against the order dated 21.10.2010 passed by Maharashtra State Medical Council and noted that the Maharashtra State Medical Council vide Order dated 21.10.2010 has issued the letter of warning to Dr. Anil Shridhar Modak with the directions, to the RMP that such dereliction in duty should not occur hence forth falling which more stringent action against the R.M.P. will be taken.

The appellant Dr. Anil Shridhar Modak has stated in his appeal that he has not done any negligence in the treatment of the patient. The Committee examined the appeal and decided to admit the same and issue notice to the respondent i.e. Mrs. Mamta S. Nigudkar along with a copy of the appeal, so that she may file a suitable reply to the appeal within a period of 4 weeks from the date of receipt of the notice with an advance copy to the appellant and this matter be placed before the Ethics Committee at its next meeting.

A request should also be made to the Maharashtra Medical Council to furnish the complete records/documents of the case.

05. Appeal against order dated 14.01.2011 passed by Delhi Medical Council filed by Mr. Rajinder Singh Mann. (F.No.168/2011).

The Ethics Committee considered the appeal filed by Mr. Rajinder Singh Mann against the order dated 14.01.2011 passed by Delhi Medical Council and noted that the Delhi Medical Council vide Order dated 14.01.2011 held that no Professional Misconduct was made out against the doctors of Akash Hospital, Delhi in the treatment administered to complainant Sh. Rajinder Singh Mann.

The appellant Mr. Rajinder Singh Mann in his appeal stated that he was not satisfied with the decision of the State Medical Council and there had been gross negligence in his treatment by the doctors of Akash Hospital. The Committee examined the appeal and decided to admit the same and issue notice to the respondent i.e. Dr. Ajit Gaba, Medical Director, Dr. Paritosh Gupta, Sr. Consultant Surgery, Dr. Manoj Goel, Chest Physician and Dr. J. S. Lamba, Consultant Physician of Akash Hospital, New Delhi along with a copy of the appeal, so that they may file a suitable reply to the appeal within a period of 4 weeks from the

date of receipt of the notice with an advance copy to the appellant and this matter be placed before the Ethics Committee at its next meeting.

A request should also be made to the Delhi Medical Council to furnish the complete records/documents of the case.

06. Appeal against order dated 23.09.2010 passed by Delhi Medical Council filed by Dr. Vishakha Munjal (F.No.123/2011).

The Ethics Committee considered the appeal filed by Dr. Vishakha Munjal against the Order dated 23.09.2008 passed by Delhi Medical Council and noted that the Delhi Medical Council vide order dated 23.09.2010 held Dr. Vishakha Munjal failed to exercise reasonable degree of skill, knowledge and care to the patient and has imposed punishment for removal of name of Dr. Vishakha Munjal from the State Medical Register of Delhi Medical Council for a period of one month.

After considering all the facts and related documents, the Ethics Committee noted that the Delhi Medical Council passed the Order on 13.05.2008, around 3 years before the date of filing of an appeal i.e. 30.03.2011. Therefore, the Ethics Committee decided not to admit the said appeal as it was a time barred case in terms of Clause 8.8. of the Ethics Regulations namely the "Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002".

07. Appeal by Smt. Renu Khatri against order dated 26/07/2010 of Delhi Medical Council (F.No. 773/2010).

The Ethics Committee considered the appeal filed by Smt. Renu Khatri against the order dated 26.07.2010 of Delhi Medical Council and noted that in this appeal the concerned doctor had been exonerated and the Delhi Medical Council has refused to entertain this complaint. On perusal of records and oral examination of Dr. D.K. Gupta, the Ethics Committee noted that Dr. D.K. Gupta was using DNB(s), suffix, without completing the said course. The Committee noted that such usage was violation of the Clause 1.4.2 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 which lays down that:-

"Physicians shall display as suffix to their names only recognized medical degrees or such certificates/diplomas and memberships/honours which confer professional knowledge or recognizes any exemplary qualification/achievements."

Therefore, the use of the DNB as suffix by Dr. D.K. Gupta with his name was wrong in terms of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The Ethics Committee feels the same amounts to

professional misconduct and his name should be struck off from the Indian Medical Register for a period of one month from the date of communication of the order of the Ethics Committee. A copy of the order be also communicated to Delhi Medical Council. Dr. D. K. Gupta should also be directed not to use said qualification before his name in future.

08. Appeal against order dated 07.12.2010 passed by Delhi Medical Council made by Mr. Gurmeet Singh Sachdeva (F.No.888/2010).

The Ethics Committee considered the appeal filed by Mr. Gurmeet Singh Sachdeva against order dated 07.12.2010 of Delhi Medical Council and heard both the parties in detail whereby Delhi Medical Council has exonerated the medical practitioner. The hearing of the case was held . Mr Sachadeva, appellant, was present along with his counsel Ms Kitoo Bajaj. Dr Rakesh Verma and Dr Diwakar Jha were represented by Mr Bharadwaj Dr Bansal was represented by Adv Gupta.. Mr Sachadeva and his counsel contended that CT scan was done at 11,19am and the report was told to Dr Rakesh Verma at 1pm and the report was given to him at 2.30 pm However no action was taken on this report till 6pm when the consultant Dr Rakesh Verma called for Dr Bansal,Neurophysician..Dr Bansal came at 8.15pm and advised to contact and call the neurosurgeon.. However the patient died before anything could be done. Dr. Rakesh Verma ,Dr Diwakar Jha and their counsel contended that Patient was admitted with non neurological complaints and only on the second day complained of headache and was found bending forward They therefore ordered CT Scan. After the CT report was available the doctors started medical treatment by giving him I V Mannitol, other supportive treatment. They also alleged that the patient`s relative at very late stage gave the history of headache for 2-3 days prior to the admission.. Dr Bansal`s counsel Dr Gupta contended that he received the call from the hospital and he had informed the hospital that he was busy in another hospital and hence will be able to only come at 8pm When he reached the hospital to see the patient was advised to call neurosurgeon as patient required surgical intervention..The committee went through all the records minutely and found that patient showed the sign of neurological problem only at a late stage and presented to the hospital with loose motions and vomiting. After CT scan report was available the doctors did start the medical treatment. Since the treating doctors were not trained neuro-physicians they called for the neurology opinion when patient started deteriorating at approximately 5pm.. After considering all the oral and documentary evidence as well the circumstances. and felt that there was an error in decision making as the events happened so suddenly. Therefore, the Ethics Committee is of unanimous opinion that there was error of judgment not amounting to professional misconduct. In view of the above mentioned facts the appeal is dismissed.

09. Appeal against order dated 07.12.2010 passed by Delhi Medical Council made by Sh. Gulshan Jit Singh Ahluwalia (F.No.36/2011).

The Ethics Committee considered the appeal filed by Sh. Gulshan Jit Singh Ahluwalia against the order dated 07.12.2010 passed by Delhi Medical Council and noted as per decision of the previous meeting of the Ethics Committee, the complainant Sh. Gulshan Jit Singh Ahluwalia and the respondent Dr. A. K. Vaidya and Dr. Vineet Talwar alongwith their counsel had appeared before the Ethics Committee.

The Ethics Committee heard the complainant Mr. Gulshan Jit Singh in person and respondent Dr. A. K. Vaidya and Dr. Vineet Talwar alongwith their counsel and also perused the records and the allegations of the appellant that Herceptin was not used while administering the treatment to the patient. The medical practitioner has relied upon the letter of Drug Controller General of India dated 07.08.2006 in which the Drug Controller has stated as under:-

“.....Treatment of the patients with HER2 positive early breast cancer following surgery, chemotherapy(neoadjuvant or adjuvant) and radiotherapy (if applicable)....”

The Ethics Committee decided that the Medical Council of India should write to Drug Controller General of India regarding the indication of use of this drug HERCEPTIN in the year 2004 and whether the use of the said drug was permissible for such hercept test stage- 3 of Breast Cancer.

After receipt of the reply from the Director, Drug Controller General of India, further action/decision will be taken in the matter.

10. G.A. No. 112/2007, G.A. No. 3543/2006, G.A. No. 2523/2009, G.A. No. 1933/2010, C.A. No. 519/1970 – Md. Shakil Vakil & anr. Vs. Rehana Begum in the High Court at Calcutta.

The Registrar, High Court at Calcutta vide its letter dated 04.03.2011(copy enclosed) has forwarded an authenticated copy of the order dated 2nd March, 2011 passed by the Hon'ble Justice Sanjib Banerjee wherein His Lordship has been pleased to direct the Medical Council of India to conduct a suitable enquiry upon the subject mentioned in the order dated 02.03.2011 and to furnish a report before the Hon'ble Court within 8 weeks from the date of order.

In the order dated 02.03.2011, the Hon'ble High Court has passed the following directions:-

"The Court : One Dr. Siddique Sheriff, claiming to be an MBBS and having an apparent registration no. 29487, has issued a certificate on February 24, 2011 that Md. Shakil Vakil is under his treatment for diabetes, hyper cholestaemia and peripheral neuropathy. The doctor has claimed that the patient has been under his treatment from October 16, 2010 till the date of issuance of the certificate. The doctor has advised complete rest and required the patient not to travel.

Prima facie, the contents of such certificate appear to be without any basis and it appears that the doctor has lent his name and allowed himself to be used by this plaintiff for the plaintiff to dodge orders of this Court and not present himself before Court.

Let a copy of this order be forwarded to the Chairperson of the Medical Council of India by the Registrar, Original Side, for a suitable enquiry to be conducted and for a report to be filed before this Court eight weeks hence. A copy of the medical certificate will also be forwarded.

It is recorded that the certificate in original was made over by Mr. S.R. Islam, Advocate, claiming to represent the plaintiff. A copy of a pathology report of October 27, 2010 obtained from the Bangalore Diabetes Centre has also been made over. Copies of the pathology report and the medical certificate will be sealed and retained by the Registrar. Original Side for future reference.

Let the matter appear eight weeks hence."

The matter was considered by the Ethics Committee at its meeting held on 05.04.2011 and it was decided to call Dr. Siddique Sheriff for hearing on 10.05.2011.

As per the above decision, Dr. Siddique Sheriff had been requested to appear before the Ethics Committee on 10.05.2011 at 3.30 p.m vide Council's letter dated 09.04.2011.

The Ethics Committee considered the order passed by Hon'ble High Court of Calcutta and noted that Dr. Siddique Sheriff has sent a letter stating that it would not be possible for him to appear before the Ethics Committee but he was willing to appear before Ethics Committee if the meeting of Ethics Committee was held at Bangalore. He has also send photocopy of certificate and laboratory report.

The Ethics Committee rejected the request of Dr. Siddique Sheriff. He ought to have appeared before the Ethics Committee and placed the material before the Committee. The Ethics Committee feels that such type of patient as described by Dr Siddique Sheriff in his certificate generally does not require bed rest. Therefore the certificate issued by Dr Siddique Sheriff appears to be incorrect from the available record. Ethics Committee is of the opinion that this decision should be communicated to Hon'ble High Court of Calcutta by MCI

11. Appeal against order dated 03.11.2010 passed by Delhi Medical Council made by Dr. Anupam Jena (F.No. 02/2011).

The Ethics Committee considered the appeal filed by Dr. Anupam Jena against the Order passed by Delhi Medical Council dated 03.11.2010. By the said Order, Delhi Medical Council has held Dr. Anupam Jena guilty of professional misconduct and has imposed punishment of removal of name of Dr. Anupam Jena from the State Medical Register of Delhi Medical Council for a period of one month.

We have perused the grounds of appeal on which the order passed by Delhi Medical Council and have gone through the relevant treatment records as well the oral deposition made by both the parties on 5/4/2011. From the record it appears that Dr Jena diagnosed the patient as a case of pneumonia and prescribed the medicines i.e. IV Azithromycin and IV Levofloxacin. Patient`s father had informed Dr Jena bout patients history of various allergies and the fact that he has multisystem complications due to his original condition of Duchene Muscular Dystrophy. On perusal of the papers the Ethics Committee found that Dr. Anupam Jena had not exercised due care and precaution while treating the patient especially with a known history of drug allergy and co-morbid condition. Dr Jena ought to have made sure that in view of patients co morbidities adequately trained personnel is available at the time of giving test dose though he had prescribed the medicines correctly and in good faith. The committee is of the opinion that allegation of patients father, Dr Satsangi ,that IV Azethromycin was give as a bolus against the standard practice of giving it as an infusion can not be substantiated from the available records. The Ethics Committee does not find any infirmity in the order passed by Delhi Medical Council, therefore, the Ethics Committee recommends the dismissal of the appeal filed by Dr. Anupam Jena against the order of Delhi Medical Council dated 03.11.2010.

12. Appeal against order dated 19.04.2010 passed by Delhi Medical Council made by Mr. Anil Kumar Mahato (F.No. 826/2010)

This is an appeal filed by Mr. Anil Kumar Mahato against the order of Delhi Medical Council. Delhi Medical Council in its order, dated 19.04.2010 the operative part of that order is as follows:

"In the of the above the Delhi Medical Council make the following observations:-

"A two year old child with a right divergent squint for last one year (approx.) and fundus showing and RD involving macula a diagnosis of Retinoblastoma should always be suspected and a B-scan USG, EUA and a CT/MRI of orbit and brain is mandatory immediately. In addition parents should be informed of the possibility of tumour in right eye. A squint surgery is not advisable till tumour is ruled out."

The Delhi Medical Council, therefore, issues a warning to both Dr. Madhu Karna (DMC registration no. 43965) and Dr. Avinindra Gupta (DMC registration no. 43001) of Centre for sight."

Matter stands disposed"

The appellant filed the appeal against this order for enhancement of the punishment. Both the parties were given opportunity to present their arguments and evidence on 5/4/2011. Mr Mahato contended the concerned doctors did not take prompt action and delayed the correct treatment which resulted in the loss of eye of his child. The treating doctors contended that they have treated the patient properly and delay of treatment has nothing to do with the surgery of enucleation. The committee perused all the records minutely and considered all oral evidence. The committee is of the opinion that there was error of judgment on the part of both the doctors on issue of B Scan and Squint Surgery. The committee further noted that delay in diagnosis of Retinoblastoma has not affected patients prognosis. In view of the abovementioned facts the committee is of the opinion that the decision of Delhi Medical Council is correct. And appeal of Mr. Mahato can not be upheld.. However the committee noted that both the doctors are specially trained retinal surgeons from reputed institutes in the country specialized in eye surgery namely Arvind Eye Hospital and Shankar Netralaya.. The committee further noted that in view of their very specialized training it is expected that they should not have committed such an error of judgment.

Therefore, the committee recommends that Dr Arvind Gupta and Dr Madhu Karna should attend their above mentioned institutes i.e. Arvind Eye Hospital and Shankar Netralaya for CME and Update for 15 days every year for next 3 years. and submit compliance report with the certificate of completion of update from the concerned institutes to MCI ethics section every year for next three years. The committee directs MCI ethics section to inform this decision to the concerned institutes also.

13. Appeal by Mr. M.K.Gupta against order dated 07/12/2010 of Delhi Medical Council (F.No. 885/2010).

The Ethics Committee considered the appeal filed by Mr. M. K. Gupta against order dated 07.12.2010 passed by Delhi Medical Council and noted that that opinion from one member of the Ethics Committee has been received which is reproduced as under:-

Brief grounds of appeal:

Child was given excessive intravenous fluids which resulted in worsening of the condition.

There is merit in the complaint, fluid orders by the doctors and then reproduced by nurses is far too excessive. The child apparently received at least 700 ml fluid over 6 hours (between 9pm to 3 am). The maintenance of fluid records is very vague and it is possible that the child has received much more fluids. However, at other places in the case records the prescription is grossly wrong (70 ml/kg/hr) and if these orders were carried

out this would cause serious overload to heart and produce severe respiratory distress and may lead on to death.

Hence this ground of challenge is upheld and proves negligence by the treating team namely Dr Sachin, the primary doctor who prescribed and supervised in the night.

Consultant examined the child 13 hours after admission and no doctor examined the child between 9 am and 7 pm.

The child was admitted in the night, seen in the emergency by qualified doctors, and correctly shifted to Pediatrics ward, started on the acute care with preliminary investigations. The Consultant, Dr. R.A. Garg saw the child in the morning and advised the line of management. Subsequently, as per case notes, has been attended by doctors and nurses periodically. There may have been difference of opinion in the management, but there has been no negligence. Hence this ground of challenge is NOT upheld and does not prove any negligence by the treating team.

X-ray chest was done at 9 am and was reported after a long delay due to the negligence of Radiologist and no treatment was started till the child worsened.

The treating consultant advised investigations and the line of treatment. X-ray chest was done appropriately, reviewed by Radiologist and reported. It is not an act of any negligence if the treatment was started on clinical suspicion pending X-ray report and it is possible that the radiologist would report after a gap of some time and that does not amount to negligence. Hence this ground of challenge against Dr. Rastogi is NOT upheld. Part two of the complaint pertains to delay in start of treatment. In this there is some ambiguity between the clinical notes and the nurse's records. The prescription of inj. Augumentin and Inj. Gentamicin is correct. The doctors claim that the drugs were started immediately and the first dose was administered at 10 am (as claimed by the nurse administering it (Medicine Sheet page 24). However, the records also show that test dose of Injection Augumentin was administered at 6pm. If the medicine had already been in use, then test dose is not given second time. The applicant's claim that the drugs were not used and the records have been fudged requires more investigations, particularly when the final hospital bill does not mention this on the charges. The claim of appellant of time of invoice and the use of drug is purely administrative, since many lives saving drugs are kept in the wards, and are used and are replenished subsequently. Hence this claim is partially upheld to the tune of treating team and the order of DMC towards no negligence of the radiologist is approved.

Medical records have been forged.

The complainant's grievance of forgery of the records is not proved beyond doubt, the discrepancy of some recordings of doctors and nurses are present.

Doctors have been found guilty but the punishment of mere warning is very lenient

The child has been managed in a very casual manner, the fluid therapy in a sick child particularly malnourished has not been efficient, doctor's orders, nursing records, the follow-up, looking for evidence of fluid overload has not been correct. Similarly, diagnosis of infection was either ignored or if diagnosed, then the promptness of therapy is not borne out by the clinical notes. The treating consultant has been very casual, the child's records were not properly scrutinized and hence it could have resulted in the unfortunate demise of the child.

There was a clearly defined role of Dr R.A. Garg, the admitting consultant, Dr.Sachin Jain, the admitting resident and both of them are found negligent. All four doctors were part of the treating team and therefore, all the four doctors are responsible for this child's care, and hence, all of them should be punished for professional misconduct. .

After considering all the facts, available records with the Council and the opinion of the member of the Ethics Committee, the Ethics Committee unanimously recommends that a prima facie case of professional misconduct is made out against the Consultant namely Dr. R. A. Garg as he did not exercise due care and caution while treating the patient Late Samiksha Gupta, therefore, the quantum of punishment should be enhanced from warning as issued by Delhi Medical Council vide order dated 07.12.2010 to three months removal of the name of Dr. R. A. Garg from the Indian Medical Register/State Medical Register.

The Ethics Committee further noted that other three Resident doctors i.e. Dr. Sachin Jain, Dr. Shailesh and Dr. Isha Khetrapal were also the part of the treating team/unit and case of professional misconduct is also made out against them. However Ethics Committee noted that the residents were working under the supervision of the consultant. Delhi Medical Council has issued warning to only Resident Doctor, Dr. Sachin Jain. The Ethics Committee decided to uphold the decision of Delhi Medical Council in respect of Dr Sachin Jain and decided also to issue warning letters to other two resident doctors,namely Dr Shailesh and Dr Isha Khetrapal.

14. Appeal by Dr. Kunal Saha against Dr. Ketan Desai – reg.

The Ethics Committee considered the matter with regard to appeal by Dr. Kunal Saha through his Counsel Mr. T.V. George. The Ethics Committee also perused the notice issued to Dr. Ketan Desai and the letter received received from Mr Bhasin. Dr Desai's counsel stating that Dr Desai had to appear before Enforcement Directorate on the same day at 2.30pm. The committee noted that Dr. Ketan Desai is being represented by Mr. J.S. Bhasin and he should have been present before the Ethics Committee on behalf of Dr. Ketan Desai. The Committee also noted that Mr. T.V. George, Counsel of Dr. Kunal Saha had stated that Gujarat Medical Council had not executed the order of MCI dated 09.10.2010. In interest of justice, the Ethics Committee decided to give a final opportunity to Dr. Ketan Desai to appear either himself or through Counsel before Ethics Committee and give replies to the notices issued to him, failing which, the Ethics Committee shall decide the matter on the basis of available records. The committee also noted Mr. T V George's contention about non execution and non compliance of MCI's order dated 09/10/10 by Gujarat Medical Council and the committee is of the unanimous opinion that this issue should be referred to Board of Governors for taking it before any higher judicial forum for resolution

15. Appeal by Dr. Kunal Saha against order dated 18/06/2002 of West Bengal Medical Council (F.No. 190/2009).

The Ethics Committee considered the appeal filed by Dr. Kunal Saha against the order of West Bengal Medical Council dated 18.06.2002. The West Bengal Medical Council vide order dated 18.06.2002 dismissed the complaint of Dr. Kunal Saha. The order passed by West Bengal Medical Council is quoted as under:-

"Report on the Final Decision of the West Bengal Medical Council in respect of complaint lodged with the West Bengal Medical Council by Dr. Kunal Saha, Assistant Professor, Department of Paediatrics and Medical Microbiology – Immunology, Childrens Hospital Ohio State University, Medical Centre, 700 Children's Drive RMW 532, Columbus, OH 43205 U.S.A. alleging negligence and maltreatment of his wife, Mrs. Anuradha Saha resulting into her death against –

<i>Dr. Sukumar Mukherjee</i>	<i>Regn. No. 26861</i>
<i>Dr. Abani Roy Choudhuri</i>	<i>Regn. No. 27014</i>
<i>Dr. Baidyanath Halder</i>	<i>Regn. No. 25474</i>

All registered with West Bengal Medical Council.

Hon'ble Mr. Justice Pinaki Chandra Ghosh of the Calcutta High Court in Case No. WP No. 2599 of 1999 (Dated March 13, 2000) directed the West Bengal Medical Council for giving a Reasoned Judgement. In compliance with the direction of the Hon'ble High Court, in the meeting of the Council held on May 14th, 2002, and May 20th, 2002, the Members of the Council deliberated on the complaint made by Dr. Kunal Saha against Dr. Sukumar Mukherjee and gave their opinion.

Dr. Kunal Saha, a non resident Indian, lodged a complaint with the West Bengal Medical Council against Dr. Sukumar Mukherjee (Dr. Mukherjee) on July 07, 1999. He alleged that Dr. Mukherjee used a drug Injection Depomedrol for treatment of his wife Mrs Anuradha Saha (Mrs. A. Saha) on and from May 07, 1998. Mrs. Saha was found to be suffering from TEN (diagnosed for the first time on May 11, 1998, evening by Dr. A.K. Ghoshal). She was admitted in AMRI hospital. She was later on taken to Breach Candy Hospital, Mumbai, where she succumbed to death. Dr. Saha's allegation was that Dr. Mukherjee used on May 7th, 1998, a wrong drug (Depomedrol) in a very high dose and claimed that the death of his wife (Mrs. A. Saha) was due to immuno-suppression and sepsis, on account of use of this drug.

In another complaint made soon after (August 10, 1999) against Dr. Abani Roy Chowdhury and Dr. Baidyanath Halder, Dr. Saha stated that these doctors treated Mrs. A. Saha at AMRI (after departure of Dr. S. Mukherjee) wrongly and hence was responsible for her ultimate death at Mumbai.

He produced opinion from various Experts from different countries in his favor and demanded immediate removal of names of Dr. S. Mukherjee, Dr. Abani Roy Choudhury and Dr. B. Halder from the Register of Registered Doctors at the West Bengal Medical Council (where their names are registered) and requested for early investigation. Dr. Saha also brought allegation for fraudulent use of FCCP by Dr. Sukumar Mukherjee.

On receipt of the complaints from Dr. Kunal Saha, the Council asked for comments from the three Doctors namely Dr. Sukumar Mukherjee, Dr. Abani Roy and Dr. Baidyanath. This was investigated by Penal and Ethical Cases Committee.

The P.E. Committee examined the three Doctors as well as Dr. Kunal Saha the complainant and also the following witnesses –

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|---|----------------------------------|
| <i>1. Dr. Balaram Prasad</i> | <i>attached to AMRI Hospital</i> |
| <i>2. Dr. N. Iqbal</i> | <i>attached to AMRI Hospital</i> |
| <i>3. Dr. Koushik Nandy</i> | <i>attached to AMRI Hospital</i> |
| <i>4. Dr. Purnima Chatterjee</i> | <i>attached to AMRI Hospital</i> |
| <i>5. Vice-President of AMRI Hospital</i> | <i>attached to AMRI Hospital</i> |

The P.E. Committee also obtained opinions from experts in Medicines, Dermatology and Pharmacology during their course of investigation.

Thereafter, on completion of the process of investigation, the P.E. Committee placed its report to the Council with the following comments:

- (i) The allegations against Dr. Abani Roy Choudhuri and Dr. Baidyanath Halder could not be substantiated, they may be exonerated.
 - (ii) Dr. Sukumar Mukherjee was exonerated of the charges of use of FCCP fraudulently.
 - (iii) That charges of negligence of treatment against all the three Doctors i.e Dr. Sukumar Mukherjee, Dr. Abani Roy Choudhuri and Dr. Baidyanath Halder were not established.
- (a) Dr. Sukumar Mukherjee (Dr. Mukherjee) first examined the patient on April, 24, 1998, (through there was no mention in complaint of Dr. Kunal Saha (Dr. Saha)). However, Dr. Saha admitted this is his deposition before P.E. Committee. Many Doctors examined Mrs. Anuradha Saha between 24, 1998 and May, 07, 1998. There is no evidence that these were communicated to Dr. Mukherjee. After thirteen days, Dr. Saha took his wife to Dr. Mukherjee.
 - (b) On May, 07, 1998, Dr. Mukherjee diagnosed this as Allergic Vasculitis on clinical grounds. One injection of 80 mg Depomedrol was given by Dr. Mukherjee himself while prescribing injection Depomedrol 80 mg IMBD for three days. Dr. Saha could not produce any evidence that 5 other injections were administered at all or not could be "remember" who gave these injections (Deposition before P.E. Committee)
 - (c) Evidence shows that many Doctors examined Mrs. Anuradha Saha between 7th and 11th May, 1998, including Dermatologist Dr. A.K. Ghoshal and Dr. Sanjay Ghosh. There is no evidence that these were communicated to Dr. Mukherjee. There was no evidence that these consultations were taken after obtaining approval and / or consent (except in case of Dr. Ghoshal who was requested to examine Mrs. Anuradha Saha by Dr. Mukherjee himself on May, 07, 1998) from Dr. Mukherjee or the same were at all communicated to Dr. Mukherjee.
 - (d) Initially on 24.4.98, Dr. Mukherjee noted that Mrs. Anuradha Saha was allergic to chinese food. Dr. Saha confessed that Mrs. Anuradha Saha used to take Chinese food. In her deposition before PE Committee., Dr. Purnima Chatterjee, Gynecologist, while examining Mrs. Anuradha Saha at AMRI stated that Dr. Saha informed her that Mrs. Anuradha saha's symptoms flared up after taking Chinese food on May, 10, 1998.
 - (e) Evidence shows that patient was admitted in AMRI under Dr. Balaram Prasad, Dr. Prasad stated in his deposition before P.E. Committee-I that he received Pager Message on May, 11 1998. Requesting him to see Mrs. Anuradha Saha, who was admitted under Dr. Prasad, Dr. Prasad stated that this was the choice of Dr. Kunal Saha. Dr. Kunal Saha himself stated that admission was under Dr. Prasad as Dr. Mukherjee was scheduled to leave for abroad. Dr. Prasad himself on his own advised two injection i.e Injection Depomedrol.
- Dr. Mukherjee, produced an authenticated copy of his application dated April,22,2 1998 addressed to AMRI authorities intimating his absence with effect from May, 12, 1998. He also informed Dr. Saha on April, 24,1998 and also subsequently about his pre-planned visit to U.S.A from May, 12 , 1998 Dr. Mukherjee requested Dr. Balaram Prasad to consult Dr. Abani Roy Choudhuri and Dr. B.N. Halder regarding Mrs. Anuradha Saha at AMRI as Dr. Mukherjee was leaving for U.S.A.
- (f) Evidence shows that Dr. Mukherjee left for U.S.A on May, 12, 1998, and hence there was no scope for him to participate in the management of the patient at AMRI.
 - (g) Dr. Kunal Saha repeatedly interfered and sometimes modified the line of management as were advised by the doctors. As per deposition of the Vice President of AMRI before the P.E. -I Committee, Dr. Saha even did not allow nurses and doctors to examine Mrs. Anuradha Saha at AMRI. Dr. Kunal Saha also interdered with treatment at Breach Candy Hospital (as per Breach Candy Hospital records).

Dr. Kunal Saha also did not follow the advice of Dr. Sanjoy Ghosh dated May 06,1998, for skin biopsy of his wife.

(iv) However, the dosage of Depomedrol as has been advised in this case by Dr. Sukumar Mukherjee appeared to be very high.

The Council , However, referred back the case to the concerned P.E. committee for elaborating its recommendation for exonerating the Doctors. This was complied with.

Thereafter, the Council after consideration of the Report along with evidences and other documents of the P.E. Committee exonerated Dr. Abani Roy Choudhuri and Dr. Baidyanath Halder of the charges leveled against them.

However, it appeared that the dosage of Depomedrol, advised by Dr. Sukumar Mukherjee was high and hence the Council issued charge sheet to Dr. Sukumar Mukherjee dated 08.11.2011, as follows:-

"That you have used Injection Depomedrol 80 mg BD on Mrs. Anuradha Saha, wife of Dr. Kunal Saha of U.S.A. who was under your treatment on and from April, 24,198,

to May 11, 1998, which is much above the recommended dose of the drug and, hence, you are required to justify use of the said drug at such a high dose."

On receipt of the reply of Dr. Sukumar Mukherjee dated 29.11.2011, in respect of the Charge Sheet issued to him, the Council started its enquiry as per Rule 15 of the Bengal Medical Act, 1914. During the hearing both Dr. Kunal Saha and Dr. Sukumar Mukherjee were accompanied by their lawyers all throughout. Adequate opportunities were given to the complainant as well as the practitioner Dr. Sukumar Mukherjee. Both Dr. Kunal Saha and Dr. Sukumar Saha and Dr. Sukumar place their submissions but did not produce any witness. Dr. Kunal Saha and Dr. Sukumar Mukherjee wanted to be assisted by their lawyers, not to be represented by them.

Dr. Kunal Saha in his submission dealt mainly with methodology of clinical trials of Drugs, stressing upon the overdosage of Depomedrol from the opinion of Skin and other Specialists from India and abroad with quotations from Foreign and Indian Literature. A submission was also made by the Learned Counsel of Dr. Saha on legal aspects which was allowed by the Council.

In reply Dr. Sukumar Mukherjee submitted before the Council that he treated the patient as Allergic vasculitis and not Ten Toxic Epidermal Necrolysis and Dr. Mukherjee in support of his contention in justifying use of Injection Depomedrol in his final address to the Council stated:

- (i) His diagnosis was Allergic Vasculitis.
- (ii) He Examined patient on April 24, 1998 and on May, 07, 1998. He was also consulted on May 11, 1998. at AMRI by Dr. B. Prasad:
- (iii) He never diagnosed the patient as TEN and never used Depomedrol on Mrs. Anuradha Saha as a patient of TEN.
- (iv) Very brief period of Depomedrol use (3 to 4 days) in a relatively high dosage to mitigate gradually evolving immuno-inflammation was explained. The dosage regimen was supported from the global literatures, which were submitted before the Council by Dr. Mukherjee.
- (v) Of the six injectins prescribed by Dr. Sukumar Mukherjee, one was injected by Dr. Mukherjee himself. Regarding the remaining 5 Injections Dr. Dr. Kunal Saha could not produce any evidence that they were actually administered.
- (vi) The presence of Sepsis had not been consistently established beyond doubt at AMRI upto May 18, 1998.
- (vii) The use of Depomedrol is not proved to be a direct or proximate cause of her death. No autopsy was done, nor diagnosis of TEN was confirmed by biopsy.
- (viii) The administration of Depomedrol in the form of a single injection (other five such injections were not conclusively proved to be administered to the patient due to lack of authentic records) was not related to be the sole cause of here death – either directly or indirectly, specially when death occurred after a lapse of about 3 weeks after single dose of proved administration by Dr. Mukherjee Furthermore, proper investigation viz. skin biopsy etc. was not doen (thought advised) to arrive at the diagnosis of TEN, nor any post mortem examination was ever advised by the concerned Doctors of Breach Candy Hospital or Dr. Kunal Saha himself has not insisted on such autopsy to know the actual cause of death.

At the conclusion of submission, the case was close and the members of the Council deliberated upon the whole matter.

After going through the papers and evidences produced, the Council came to the following conclusions:

- (a) Re: Dr. Abani Roy Choudhauri- There was no evidence that Dr. Abani Roy Choudhuri either examined Mrs. Anuradha Saha, or advised any medicine and participated in her treatment as AMRI Hospital;
- (b) Re: Dr. Baidyanath Halder – Dr. Baidyanath Halder was consulted only once on 12.5.98 and there is no evidence that he participated in treatment of Mrs. Anuradha Saha;
- (c) The Council could not come to the conclusion whether five injections of Depomedrol, prescribed by Dr. Mukherjee were actually administered to Mrs. Anuradha Saha or by whom during 7th to 10th May, 1998;
- (d) As Dr. Sukumar Mukherjee was not present in India after May 11' 1998, he cannot be held responsible for any lapse or mis-management of the case in the treatment of Mrs. Anuradha Saha.
- (e) The Council was of the view that there was extreme lack of co-ordination in managing Mrs. Anuradha Saha's illness at AMRI as many doctors were consulted and there was lack of interaction among themselves;
- (f) Dr. Kunal Saha interfered with treatment of Mrs. Anuradha Saha and even did not allow Doctors and Nurses to examine Mrs. Anuradha Saha at AMRI (as per Deposition of Vice-President, AMRI at P.E. Committee). He also interfered with treatment of Mrs. Anuradha Saha at Breach Candy Hospital (Breach Candy Hospital Records);
- (g) Dr. Kunal Saha did not follow advice regarding skin biopsy on May 06, 1998 and on May 12, 1998 which would have helped coming to early diagnosis.

- (h) Mrs. Anuradha Saha was allergic to Chinese food "Mrs. Anuradha Saha was fond of Chinese food which she took at times." (Deposition of Dr. Kunal Saha before P.E. Committee). Dr. Kunal Saha informed Dr. Purnima Chatterjee, Gynaecologist who examined Mrs. Anuradha Saha at AMRI that he flare up followed intake of Chinese food on May 10, 1998.
- (i) Opinion of experts expressed in global literatures regarding use and dosage of Depomedrol as USPDJ Vol. 1 1994 page 966, Harrison's principles of Internal medicine CD-ROM 1998, Principles of Pharmacology by Paul Munsen, Dermatology of Fitzpatrick, Drug Therapy by Collin Dollery and other authoritative Books, were cited by Dr. Sukumar Mukherjee. He also provide Xerox copies of relevant reference after reading them all from original texts. These were gone through by the Members of the Council and overwhelming majority of the members were of the opinion that dose of Depomedrol advised by Dr. Sukumar Mukherjee was not unjustified.

In the concluding Meeting dated May 20, 2002, all the members present expressed their views. The President of the Council presided over the said meeting but did not take part in the deliberation or ever expressed his views. The explanations offered by Dr. Mukherjee was accepted by the majority of the Members present in the meeting and considering such acceptance, the Council exonerated Dr. Sukumar Mukherjee of the charges framed against him (as required under Section 25(a)(ii) of the West Bengal Medical Act, 1914).

Taking the opinion of the majority of the Members of the Council exonerated Dr. Sukumar Mukherjee of the charges levelled against him. It was also decided to intimate the complainant Dr. Kunal Saha that the allegations against Dr. Abani Roy Choudhury and Dr. Baidyanath Halder could not be substantiated as was evident from their deposition and records and were exonerated by the Council but the decision of the Council was withheld for completion of the total case.

After the decision of the Council was communicated to Dr. Sukumar Mukherjee , Dr. Abani Roy Choudhuri and Dr. Baidyanath Halder as well as the complainant Dr. Kunal Saha on May 20, 2002, an application was filed on May 21, 2002, by Sri P.K. Dutta Learned Counsel of Dr. Kunal Saha before the Hon'ble Justice Sri Pinaki Chandra Ghosh of Calcutta High Court that he was denied by the Council an opportunity of appearing before the Council and prayed for a hearing. Hon'ble Sri Pinaki Chandra Ghosh was pleased to pass an order on May 23, 2002, directing the Council to give a hearing to Sri P.K. Dutta for a day without any further adjournment on any ground. The order was received by the Council on June 11, 2002, after the High Court re-opened after vacation, through the Council's Learned Advocate. No communication was received from either party in this respect.

Accordingly, the Council informed the Learned Counsel Mr. P.K. Dutta on June 13, 2002 by a letter [which was duly received by him on the same day] intimating him to appear before the Council on June 18, 2002 at 2.00 p.m., but Mr. P.K. Dutta did not appear on the plea that the letter of the Council addressed to him was not sent through the Solicitors or his client and informed the same in his letter date June 18, 2002, received by the Council at 1.10 p.m. It may be noted that Mr. P.K. Dutta himself requested the Council for giving an adjournment of hearing on May 20, 2002 on his personal ground in his personal pad addressed to the President of the Council and not through the Solicitor or his client.

The Council under these circumstance perused the letter of Mr. P.K. Dutta and the Members were of the opinion that as Mr. Dutta had directly prayed before the Hon'ble High Court for fixing a date of hearing which the Hon'ble Court was pleased to grant, the Council decided not to adjourn the meeting as per Hon'ble Court's Order on account of non-appearance of Mr. Dutta. The Council reiterated its earlier decision dated May, 20, 2002, exonerating all the three above mentioned doctors and closed the matter.

This time also also the President WBMC. While presiding over the meeting did not express any views not participated in the deliberations."

The Ethics Committee heard both the parties including their respective counsels. The main objection of the respondent was that this complaint is barred by time and Regulations 8.8. of the Ethics Regulations -2002 provides that appeal can be filed within a maximum period of 120 days. It was also submitted by respondent that there was no professional misconduct on the part of the respondent i.e. Dr. Sukumar Mukherjee and Dr. B. N. Halder. They administered the treatment in accordance with the standard protocol . The Ethics Committee

has already deliberated in detail at its previous meetings and after deliberation the Council came to the following conclusion:-

Brief Facts:

Patient Anuradha developed fever along with skin rash on 25.04.1998. On 26.04.1998, Dr. Sukumar Mukherjee attended and examined Anuradha at her parental residence on a professional call. Dr. Sukumar Mukherjee assured the patient and her husband Dr. Kunal Saha of a quick recovery and advised her to take rest but did not prescribe her any specific medicine. However, two weeks thereafter, i.e., on 7th May, 1998, the skin rash reappeared more aggressively. Dr. Mukherjee was again contacted and as per his instructions, Anuradha was taken to his chamber. After examining Anuradha, Dr. Mukherjee prescribed Depomedrol injection 80 mg twice daily for the next three days. Despite administration of the said injection twice daily, Anuradha's condition deteriorated rapidly from bad to worse over the next few days. Accordingly, she was admitted at the Advanced Medicare Research Institute (AMRI) in the morning of 11th May, 1998 under Dr. Mukherjee's supervision. Anuradha was also examined by Dr. Baidyanath Halder, Dr. Halder found that she had been suffering from Erihima plus blisters. Her condition, however, continued to deteriorate further. Dr. Abani Roy Chowdhury, Consultant No. 3 was also consulted on 12th May, 1998. On or about 17th May, 1998, Anuradha was shifted to Breach Candy Hospital, Mumbai as her condition further deteriorated severely. She breathed her last on 28th May, 1998.

On or about 19th November, 1998 one of her relatives, Malay Kumar Ganguly filed a Criminal Complaint in the Court of Chief Judicial Magistrate, 24 Paraganas at Alipore against Dr. Sukumar Mukherjee, Dr. Baidyanath Halder and Dr. Abani Roy Chowdhury, for commission of offence under Section 304-A of the Indian Penal Code. Thereafter, Kunal filed O.P. Nos. 240 of 1999 against 19 persons who had rendered medical advice/treatment/facilities to Anuradha between 23rd April, 1998 and 17th May, 1998 at Kolkata before the National Consumer Disputes Redressal Commission, New Delhi.

On or about 17.7.1999, a complaint was filed by Kunal against Dr. Sukumar Mukherjee, Dr. Baidyanath Halder and Dr. Abani Roy Chowdhury before the West Bengal Medical Council (WBMC) making allegations similar to the one he had made in his complaint before the Commission.

Before the learned Chief Judicial Magistrate, in the said criminal complaint a large number of witnesses were examined. A large number of documents were also marked as exhibits. The learned Chief Judicial Magistrate, Alipore by his judgment and order dated 29th May, 2002 found Respondent Nos. 1 and 2 guilty of commission of an offence under Section 304-A of the Indian Penal Code and sentenced them to undergo simple imprisonment for three months and to pay a fine of Rs. 3,000/- each and in default to undergo a further simple imprisonment for 15 days. Respondent No. 3, Dr. Abani Roy Chowdhury was, however, acquitted.

The West Bengal Medical Council dismissed the complaint filed by Dr. Kunal by its order dated 1st July, 2002.

On 25th May, 2003 the complainant - Kunal withdrew O.P. No. 179/2009 filed before the Commission against the doctors/Breach Candy Hospital.

Against the order of the learned Magistrate, Dr. Sukumar Mukherjee filed Criminal Appeal which was marked as Criminal Appeal No. 55 of 2002 and Dr. Baidyanath Halder filed Criminal Appeal No. 54 of 2002 before the learned Sessions Judge at Alipore, whereas the complainant, Mr. Malay Kumar Ganguly, filed a revision application being C.R.R. No. 1856 of 2002 for enhancement of the punishment imposed on Dr. Sukumar Mukherjee and Dr. Baidyanath Halder Respondent Nos. 1 and 2. The complainant also filed another revision application before the High Court questioning the legality of the judgment with respect to acquittal of Respondent No. 3. The Calcutta High Court withdrew the appeals preferred by Respondent Nos. 1 and 2 before the learned Sessions Judge to itself and heard the criminal appeals and revision petitions together.

By a judgment and order dated 19th March, 2004 the appeals preferred by Dr. Dr. Sukumar Mukherjee and Dr. Baidyanath Halder were allowed while the Criminal Revision Petitions filed by the complainant were dismissed by the Hon'ble Court. The said order has been challenged before the Hon'ble Supreme Court by way of Criminal Appeal Nos. 1191-1194 of 2005.

The Commission also by its judgment and order dated 1st June, 2006 dismissed O.P. No. 240 of 1999. The said order was challenged before the Hon'ble Supreme Court by way of Civil Appeal No. 1727 of 2007 arises out of the said order.

The aforesaid Criminal Appeal Nos. 1191-1194 of 2005 and Civil Appeal No. 1727 of 2007 were considered together by the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its judgment dated 07.08.2009 after appreciating entire evidences advanced by both the parties and the experts' opinion, held Dr. Sukumar Mukherjee, Dr. Baidyanath Halder and Dr. (Late) Abani Roy Chowdhry guilty of negligence. However, before perusing the aforesaid judgment of the Hon'ble Supreme Court, we would like to enumerate general principles relating to medical negligence

General principles relating to medical negligence

The broad principles of medical negligence have been laid down by the Hon'ble Supreme Court in Jacob Mathew versus State of Punjab 2005 SCC (6) 1. These principles can be indicated briefly here:

The basic principle relating to medical negligence is known as the Bolam Rule. This was laid down in judgment of McNair, J. in Bolam versus Friern Hospital (1957) 1 WLR 582 as follows:

"..... where you get situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man possessing the highest expert skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular act."

In Halsbury's Laws of England [4th Edn. Vol. 30, para 35], the degree of skill and care required by a medical practitioner is stated as follows:

"35. Degree of skill and care required.— The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular act, even though a body of adverse opinion also existed among medical men.

Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is usual and normal practice; (2) that the defendant has not adopted it; (3) that the course in fact adopted is one which no professional man of ordinary skill would have taken had he been acting with ordinary care."

In Eckersley versus Binnie 1996 (2) SCC 634 the Hon'ble Supreme Court summarized the Bolam test in the following words:

"From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in the knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitation on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no expertise, skill and care other than ordinarily competent members of his profession would bring....."

In Hunter versus Hanley 1995 SLT 213 Lord Clyde stated as under:

"In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man clearly is not negligent merely because his conclusion differs from that of other professional men... The true test for establishing negligence in diagnosis and treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care....."

In the light of aforesaid principles, now, we may peruse the aforesaid judgment and order dated 07.08.2009 of the passed by the Hon'ble Supreme Court in Criminal Appeal Nos. 1191-1194 of 2005 and Civil Appeal No. 1727 of 2007 whereby the Hon'ble Supreme Court, after appreciating entire evidences advanced by both the parties and the experts' opinion held as under:

".....

There cannot be, however, by any doubt or dispute that for establishing medical negligence or deficiency in service, the courts would determine the following :

(i) No guarantee is given by any doctor or surgeon that the patient would be cured.

(ii) The doctor, however, must undertake a fair, reasonable and competent degree of skill, which may not be the highest skill.

(iii) Adoption of one of the modes of treatment, if there are many, and treating the patient with due care and caution would not constitute any negligence.

(iv) Failure to act in accordance with the standard, reasonable, competent medical means at the time would not constitute negligence. However, a medical practitioner must exercise the reasonable degree of care and skill and knowledge which he possesses. Failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence.

(v) In a complicated case, the court would be slow in contributing negligence on the part of the doctor, if he is performing his duties to be best of his ability.

Bearing in mind the aforementioned principles, the individual liability of the doctors and hospital must be judged.

We enumerate hereto below the duty of care which ought to have been taken and the deficiency whereof is being complained of in the criminal case and the civil case, respectively, so far as respondent Nos. 1 to 3 are concerned.

When Dr. Mukherjee examined Anuradha, she had rashes all over her body and this being the case of dermatology, he should have referred her to a dermatologist. Instead, he prescribed "Depomedrol" for the next 3 days on his assumption that it was a case of "vasculitis". The dosage of 120 mg Depomedrol per day is certainly a higher dose in case of a TEN Patient or for that matter any patient suffering from any other bypass of skin disease and the maximum recommended usage by the drug manufacturer has also been exceeded by Dr. Mukherjee. On 11th May, 1998, the further prescription of Depomedrol without diagnosing the nature of the disease is a wrongful act on his part.

According to general practice, long acting steroids are not advisable in any clinical condition, as noticed hereinbefore. However, instead of prescribing to a quick acting steroid, the prescription of a long acting steroid without foreseeing its implications is certainly an act of negligence on his part without exercising any care or caution. As it has been already stated by the Experts who were cross examined and the authorities that have been submitted that the usage of 80-120 mg is not permissible in TEN.

Furthermore, after prescribing a steroid, the effect of immunosuppression caused due to it, ought to have been foreseen. The effect of immunosuppression caused due to the use of steroids has affected the immunity of the patient and Dr. Mukherjee has failed to take note of the said consequences.

After taking over the treatment of the patient and detecting TEN, Dr. Halder ought to have necessarily verified the previous prescription that has been given to the patient. On 12th May, 1998 although 'depomedrol' was stopped, Dr. Halder did not take any remedial measures against the excessive amount of 'depomedrol' that was already stuck in the patient's body and added more fuel to the fire by prescribing a quick acting steroid 'Prednisolone' at 40 mg three times daily, which is an excessive dose, considering the fact that a huge amount of "Depomedrol" has been already accumulated in the body.

Life saving 'supportive therapy' including IV fluids/electrolyte replacement, dressing of skin wounds and close monitoring of infection is mandatory for proper care of TEN patients. Skin (wound) swap and blood tests also ought to be performed regularly to detect the degree of infection. Apart from using the steroids, aggressive supportive therapy that is considered to be rudimentary for TEN patients was not provided by Dr. Halder. Further 'vital-signs' of a patient such as temperature, pulse, intake-output and blood pressure were not monitored. All these factors are considered to be the very basic necessary amenities to be provided to any patient, who is critically ill. The failure of Dr. Halder to ensure that these factors are monitored regularly is certainly an act of negligence.

Occlusive dressing were carried as a result of which the infection had been increased. Dr. Halder's prescription was against the Canadian treatment protocol reference to which we have already made herein before.

It is the duty of the doctors to prevent further spreading of infections. How that is to be done is the doctors concern. Hospitals or nursing homes where a patient is taken for better treatment should not be a place for getting infection.

After coming to know that the patient is suffering from TEN, Dr. Abani Roy Chowdhury ought to have ensured that supportive therapy had been given. He had treated the patient along with Dr. Halder and failed to provide any supportive therapy or advise for providing IV fluids or other supplements that is a necessity for the patient who was critically ill....."

The Ethics committee examined the relevant provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 which are being reproduced herein below for ready reference:

"2.4 The Patient must not be neglected: A physician is free to choose whom he will serve. He should, however, respond to any 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. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care.

3.5 Treatment after Consultation: No decision should restrain the attending physician from making such subsequent variations in the treatment if any unexpected change occurs, but at the next consultation, reasons for the variations should be

discussed/explained. The same privilege, with its obligations, belongs to the consultant when sent for in an emergency during the absence of attending physician. The attending physician may prescribe medicine at any time for the patient, whereas the consultant may prescribe only in case of emergency or as an expert when called for.

7.8 *A registered medical practitioner shall not contravene the provisions of the Drugs and Cosmetics Act and regulations made there under. Accordingly,*

- a. Prescribing steroids/ psychotropic drugs when there is no absolute medical indication;*
- b. selling Schedule 'H' & 'L' drugs and poisons to the public except to his patient;*

in contravention of the above provisions shall constitute gross professional misconduct on the part of the physician."

After perusing the aforementioned judgment dated 07.08.2009 of the Hon'ble Supreme Court, provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and general principles of medical negligence and the records available with the MCI, the Ethics Committee is of the unanimous opinion that the Dr. Sukumar Mukherjee and Dr. Baidyanath Halder have committed the misconduct under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

However, in the interest of justice, the Ethics Committee feels that before awarding any punishment as provided under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, it would be deemed appropriate to give a show-cause notice to the concerned doctors i.e. Dr. Sukumar Mukherjee and Dr. Baidyanath Halder as to why punitive action be not initiated against them for committing misconduct as defined under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. It was decided by the Ethics Committee that the name of Dr. Abani Roy Chowdhry should be struck from the array of parties in as much as Dr. Abani Roy Chowdhry is no more alive.

The Ethics Committee further decided to direct the doctors to submit their explanation on the issue of quantum of punishment, within 15 days of the receipt of the notice, failing which the Committee reserves the rights to take ex-parte decision, if the reply is not received within a period of 15 days."

So far as the objection on the ground of delay in filing of an appeal is concerned, we have noted that the matter was pending in the Hon'ble Supreme Court of India through out the period. The Ethics Committee has also noted that the appellant is entitled to benefit of Section 14 of the Limitation Act, 1963, which provides for exclusion of the period from computing the time limit provided in the Act. The Committee has no doubt that Section - 14 of the Limitation Act, 1963 is applicable with regard to the Ethics Regulations.

The judgment of Hon'ble Supreme Court of India and the various aspects discussed in the said judgment leave no scope of doubt that there was professional misconduct on the part of the treating doctors and we also hold the same and concur accordingly.

So far as the quantum of punishment to be imposed on the treating doctors are concerned, the Committee has noted that the treating doctors i.e. Dr. Sukumar Mukherjee and Dr. B. N. Halder have acted in good faith. However, they did not follow the standard protocol in treating the patient suffering from TEN. We are also not oblivious of the fact that treating doctors are senior citizens aged more than 70 years. It is also important to note that one of treating doctor namely Dr.

Abani Roy Chowdhary died during the pendency of the case. Both the treating doctors are at an advanced age and the ends of justice would be met if their names are removed for a period of three months from the register of concerned State Medical Council.

16. Appeal against order dated 07.06.2010 passed by Delhi Medical Council made by Mr. S.P.Manchanda. (F.No. 597/2010).

The Ethics Committee considered the appeal filed by Mr. S.P. Manchanda against order dated 07.06.2010 passed by Delhi Medical Council. The Ethics Committee noted the order of High Court which is as under:-

"In as much as that the hearing of the appeal is to take place on 10th May, 2011 and the Petitioners are yet to be heard, this Court is not inclined to pass any order at this stage. It is obvious that no final order will be passed by the MCI without giving each of the Petitioners a full opportunity of being heard and considering all their submissions, including those raised in this petition and on the question of jurisdiction. The MCI will pass the final order without being influenced by any prima facie opinion which may have been formed by those at its meeting held on 8th March, 2011. If aggrieved by the final order passed by the MCI, it will be open to the Petitioners to seek such appropriate remedies as may be available to them in accordance with law."

The Ethics Committee heard both the parties, the appellant Mr. S.P. Manchanda & family and Respondent, Dr. Alka Gupta, Counsel on behalf of Dr. Alka Gupta Dr. Pooja Bhatia & ors. One doctor named Dr. Vikas Mangla did not appear before the Ethics Committee. Therefore, the Ethics Committee decided that both the parties be called in the next meeting of Ethics Committee for hearing in accordance with the court order.

17. Appeal against the activities and order dated 26.10.2007 passed by Rajasthan Medical Council made by Sh. Ajeet Singh Singhvi, IAS (Retd.) (F.No. 277/2007).

The Ethics Committee considered the appeal filed by Sh. Ajeet Singh Singhvi against the Order of Rajasthan Medical Council dated 26.07.2007. The Rajasthan Medical Council vide Order dated 26.07.2007 dismissed the complaint of the appellant and the order passed by Rajasthan Medical Council is as under:-

"The Council discussed and examined the complaint and the related material with the complaint made by Sh. Ajeet Singh Singhvi against Dr. T.C. Sadusukhi, Dr. Dinesh Jindal, Dr. D.S. Mathur and after due examination has resolved to drop the complaint as no prima-facie case of professional misconduct has been found against Dr. T.C. Sadusukhi, Dr. Dinesh Jindal & Dr. D.S. Mathur".

The Ethics Committee have perused the case file and the statements recorded by the previous Ethics Committee of both complainant and the treating doctors concerned i.e. Dr. T. C. Sadusukhi, Dr. D. K. Jindal and Dr. D. S. Mathur. Their statements recorded on various occasions are as under:-

Statement of Dr. T. C. Sadasukhi

I Dr. T. C. Sadasukhi did my MBBS from S. M. S. Medical College, Jaipur in the year 1974 and did my MS(Surgery) from the same College in the year 1978 and M.Ch(Neurology) also from the same college in the year 1981. My Date of Birth is 09.05.1952. I am registered with Rajasthan Medical Council bearing Registration no. 5453.

1. Written consent is concerned patient's relation. One of our teaching faculty, Professor, Dr. Neelam Bapna, Professor(Anatomy) was alongwith patient and she is relation of the patient. The patient was admitted in cottage ward which is 300 meter away from our theatre. The patient came with attendant and Dr. Neelam Bapna to the theatre. She was explained in detail. I asked for written consent on the bed head ticket and took patient in the theatre. The procedure was performed and under local anaesthesia, not under general anaesthesia. This all indicate that patient has agreed to the procedure and there is a implied consent from the patient.
2. Patient had palpable and tender lump in right flank. It was perinephric collection as a clinical first diagnosis and not hydatidcyst. Cyst(perinephric collection) was aspirated once from to posterior approach. Second collection which was superior and anterior to the kidney was drained through anterior axillary line by twelve French needle(3 to 4 millimetre size) in lumbar position.
After going through the literature even hydatidcyst can be aspirated per cutaneously in poor surgical patient and patient with multiple previous operation and infected cyst. Presently use of anti-helminthic medicine compliment to surgical management not the replacement. Since, poor result has been reported when hydatidcyst cyst are managed with systemic anti-helminthics.
3. The patient was seen in post operative period by me twice and it has been mentioned even on bed-head ticket. The patient was admitted with medical unit because of multiple medical problems and it is a usual practice in our institution whenever patient is referred by treating unit then only the required resident & consultant goes to see the patient. Page No. 47 of bed-head-ticket clearly shows that I have seen patient on 12th April-2000. So, the allegations are not seeing the patient are false.

Thanking you,

Sd/-
(Dr. T. C. Sadasukhi)"

"Statement of Dr. D.K. Jindal

I Dr. D.K. Jindal passed my MBBS from SMS Medical College, Jaipur in the year 1973 and did my MS (Surgery) from the same institute in 1997. I did my DNB in 1981 and my registration no. is 4160 of Rajasthan Medical Council. My date of birth is 15.09.1951. Regarding this particular case I am submitting parawise comments, in addition to that, I would like to make a verbal statement which is as under:-

I saw Mrs. Jatan Kanwar Singhvi and advised a sonography and in sonography it was found to have perinephric collection so I advised for urological consultation. After couple of days I was informed that patient has some discharge from the aspiration side looking to the small discharge and the patient's age was more and with consultation of urologist and relatives it was decided to treat the patient conservatively. The patient was treated in consultation with physician urologist in medical and surgical ICU's and she was attended very regularly and as and when required.

The Hon'ble members of Ethics Committee put some questions and obtained answers which were recorded.

Q.: Whether the lump was Symptomatic or Asymptomatic.

Ans.: It was Asymptomatic

Q.: Whether you attended the patient on 20th, 21st & 22nd

Ans.: On 20th when there was urgent reminder I came to see the patient for which I was submitting a Photostat copy.

Q.: Whether the procedure of aspiration was must.

Ans.: The procedure should have been done for diagnosis.

Q.: Whether the consent was obtained from the patient or the attendant.

Ans.: Since I was not involved I did not know.

Sd/-
(Dr. D.K. Jindal) 28.02.2008"

"Statement of Dr. D.S. Mathur

I Dr. D.S. Mathur passed my MBBS from SMS Medical College, Jaipur in the year 1967 and did my MD (Medicine) from the same institute in 1970. My registration no. is 2084 of Rajasthan Medical Council. My date of birth is 28.08.1945. Regarding this particular case I am submitting parawise comments alongwith a copy of the order of Rajasthan Medical Council and also a copy of date of reference to various other specialists.

The Hon'ble members of Ethics Committee put some questions and obtained answers which were recorded.

Q.: Whether the patient was put on ATT.

Ans.: She was transferred from nephrology unit as a patient of PUO and on clinical grounds we had started ATT but only after localization of a lesion in paranephric area, ATT was stopped.

Q.: What was the kidney function?

Ans.: Kidney functions were normal.

Q.: When the patient was transferred from surgical ICU to Medical ICU.

Ans.: She was transferred to Medical ICU only on the request of attendants but not by our permission.

Q.: What was the indication for admission in the medical ICU in the instance?

Ans.: I do not remember what was the exact indication it may have been case of influence of the attendants

Q.: Is it true monitoring facilities was not provided in Medical ICU to the patient on 25th April.

Ans.: 1. Exact nature of condition at that time was not required for any monitoring.

2. In any Govt. hospital the resources are limited. It was not necessary to snatch it from other patients, especially if the patient does not need monitoring.

Q.: What was the cause of death of patient.

Ans.: The patient had septicemia because of feacal fistula.

I may like to further add during the whole inquiry I have never been called and since as there is no complaint against me. This complaint is fabricated just to harass me."

Sd/-

(Dr. D.S. Mathur) 28.02.2008"

The Ethics Committee referred the matter to SMS Medical College, Jaipur to constitute a Board/Committee and investigate the matter and send the report on the allegations made by the appellant within a month. Letters in this regard were sent by MCI to SMS Medical College, Jaipur on several occasions and the last letter was sent on 08.02.2011. Unfortunately, despite repeated reminders and requests, no report has been received by MCI from SMS Medical College, Jaipur.

The Committee, therefore, decided to issue a final reminder to SMS Medical College, Jaipur to send the complete report of the Board/Committee, at the earliest, otherwise the matter would be taken up by the Ethics Committee of the Medical Council of India for final decision.

18. Appeal against order dated 03.11.2010 passed by Delhi Medical Council made by Dr. Inderjit Singh Viridi (F.No.829/2010).

The Ethics Committee considered the appeal filed by Dr. Inderjit Singh Viridi against the Order of Delhi Medical Council dated 03.11.2010. By the Order dated 03.11.2010, the Delhi Medical Council has held Dr. Inderjit Singh Viridi guilty of professional misconduct and has imposed punishment of removal of name of Dr. Inderjit Singh Viridi for a period of one month from the State Medical Register of Delhi Medical Council.

The Ethics committee had heard both the parties through their respective counsel and also perused the records of case. On perusal of all the records and

the grounds on the basis of which the Delhi Medical Council has come to the conclusion that there is a professional misconduct on the part of the treating doctor namely Dr. Inderjit Singh Viridi.

After looking into the facts and circumstances of the case, the Ethics Committee is of the opinion that it is not a case of professional misconduct. It is clear from the records that death has been caused due to the accident which was not foreseen and for the said accident, the doctor cannot be held guilty for professional misconduct.

In view of above, the appeal of Dr. Inderjit Singh Viridi is allowed and the punishment imposed on him is set aside.

19. The decision of IMA Kerala to request IMA HQ to expel me from the primary membership of IMA-News paper reports –action sought under section 8.1 of Code of Medical Ethics 2002.

The Ethics Committee considered the matter and noted that this is a complaint by one Dr. Babu K.V his main grievance is that IMA which is an association of medical practitioner has taken a decision to expel him from the membership from IMA for exposing Pepsi or Dabur endorsements. This is a dispute between a member and the association. It has nothing to do with violation of Ethics Regulations of MCI. Therefore, the complaint of Dr. Babu K.V. cannot be entertained as MCI has no jurisdiction in the matter.

20. AP Medical Council – Complaints – Complaint of improper management of AMC Ward & Negligence of doctors – Action – Requested – Regarding.

The Ethics Committee considered the complaint of improper management of AMC ward and negligence of doctors. The decision of Ethics Committee of AP Medical Council is also mentioned in the letter dated 05.03.2011 of AP Medical Council. A perusal of the letter reveals serious allegations against the management of S.V.S Medical College in running the said college and hospital. The allegations are of very serious in nature and require surprise inspection to verify the correctness of the allegations mentioned in the letter of AP Medical Council. For doing the needful, the matter may be referred to concerned sections.

21. Implementation of the Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002 as amended from time to time.

The Ethics Committee considered the letter of Registrar, Tamil Nadu Medical Council dated 21.11.2007 in which he has questioned the jurisdiction of Medical Council of India to proceed with the complaints or to seek documents from

Tamil Nadu Medical Council. The Ethics Committee decided that this issue may be placed before the Board of Governors for proper action to be initiated at their end.

22. Complaint against Dr. S.C. Jaiswal forwarded by the Supdt. Of Police, CBI, Jabalpur (F.No. 124/2011)

The Ethics Committee considered the complaint against Dr. S.C. Jaiswal filed by Supdt. of Police, CBI, Jabalpur. He has forwarded an order of CBI Court dated 22.10.2010 whereby Dr. S.C. Jaiswal has been convicted for taking bribe and punished for 6 months of rigorous imprisonment alongwith fine of Rs. 5000/-. The Ethics Committee feels that strict action should be taken against the Doctor who has been caught by CBI and convicted by a Court of Law and we deem it appropriate to suspend the license of Dr. S.C. Jaiswal. We also think a show-cause notice be issued to Dr. S.C. Jaiswal and let this matter be placed for hearing in next meeting of Ethics Committee and a letter should be communicated to State Medical Council informing that the license of Dr. S.C. Jaiswal has been suspended during the pendency of the complaint before Medical Council of India. Let a copy of the complaint by CBI may also be sent to Dr. S.C. Jaiswal.

23. Complaint against Dr. Rakesh Varma, HOD Cardiology, Safdarjung Hospital, New Delhi.(F.No. 396/2009).

The Ethics Committee considered the complaint against Dr. Rakesh Varma and after hearing both the parties and perusing the records and FIR, it is noted that Dr. Rakesh Varma has been accused of serious allegations of violating the faith, reposed in a doctor by hapless patient. He has been misusing his profession for indulging various acts and omission which is unbecoming of a medical practitioner.

Having regard to seriousness and nature of allegations, the Ethics Committee recommends that license of Dr. Rakesh Varma be suspended during the pendency of the criminal case against him.

- 24. (1) Complaint against Dr. O.P. Murthy for plagiarism of Scientific papers and other Fraud and Cheating at A.I.I.M.S. (F.No. 629/2009).**
- (2) Complaint against Criminal nexus of Dr. OP Murthy additional professor forensic medicine AIIMS and Dr. Ketan Desai former MCI President and others for monetary gain, extortion of money by blackmail, forgery and fudging the inspection report for the various medical colleges by impersonation and other criminal activities with regard to grant of permission/recognition of various medical colleges in the country.**

The Ethics Committee perused the records and noted the inspection report signed by Dr. O.P. Murthy. It was observed by the Committee that Dr. O.P. Murthy has signed as Professor while his designation is that of Additional

Professor, Department of Forensic Medicine, AIIMS as per the records available with the Council. The Ethics Committee came to the conclusion that it is a prima facie case of professional misconduct on the part of Dr. O.P. Murthy, therefore, the Ethics Committee is of the opinion that in the interest of justice a show-cause notice should be given to Dr. O P Murthy and called for personal hearing at the next date of meeting.

25. Appeal against order dated 23.12.2010 passed by M.P Medical Council made by Mr. Bihari Lal Thawait (F.No.69/2011).

The Ethics Committee considered the appeal by Mr. Bihari Lal Thawait against the order dated 23.12.2010 of M.P Medical Council. After perusing the file and going through the records the Ethics Committee feels that no case of professional misconduct be initiated against the treating medical practitioner. It appears from the records that the patient has benefited considerably from the surgery conducted by medical practitioner. Therefore, the appeal is dismissed.

26. Appeal against order dated 27.12.2010 passed by Delhi Medical Council made by Dr. Rakesh Malhotra (F.No.35/2011).

The Ethics Committee considered the appeal by Dr. Rakesh Malhotra against order dated 27.12.2010 passed by Delhi Medical Council. The appellant has been held guilty of professional misconduct. We have perused the grounds for challenging the appeal and records which were summoned from Delhi Medical Council. On perusal of documents it is beyond doubt that the petitioner is having only MBBS, DCH degrees whereas he has displayed on his board, that he is holding MD degree. The same clearly amounts to professional misconduct. We do not find any merit in the appeal and the same is dismissed.

27. Request for seeking compliance of order dated 29.03.2011 passed in DBCWP No. 3031/2007.

The Ethics considered the letter received from Ravinder Singh Saluja, Advocate dated nil and the order of the Hon'ble High Court of Rajasthan dated 29.03.2011 and directions contained therein was placed before the Ethics Committee. The issue posed in the said judgement/ order is as to whether branded name of drugs can be permitted in respect of combination and life saving drugs or not.

The Ethics Committee deliberated and discussed on the issue in threadbare manner. The Ethics Committee relied on the provisions of Ethics Regulations namely the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, contained in Regulation 1.5 and the same is reproduced here as under:-

“Every physician 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.”

The Ethics Committee also cited the example that generic drugs are much cheaper to the branded drugs. The Ethics Committee also noted that a provision is already there in the Ethics Regulations which says that as far as possible, generic name of drugs should be used and there should not be any exception for combination drugs or life saving drugs. The generic name should be prescribed as it is beneficial to the Society.

The Committee felt that it is scientifically rational to prescribe generic name of drug and the same should be communicated to Mr. R. S. Saluja, Advocate.

28 Corruption in medical profession and Medical Institutions.(F.No.177/2011).

The Ethics Considered the complaint regarding excessive charges in the form of taking commissions for doing MRI, CT Scan etc. The allegation is that the nursing homes taking commissions from Chemist which are functioning from the premises of Nursing Homes and hospitals. The allegation is that medical practitioners who are running the nursing home and hospitals have been indulging in professional misconduct by fleecing the hapless patient.

This is a serious allegation on the state of affairs existing in nursing homes and the private hospitals. This cannot be overlooked or ignored by apex regulatory authority i.e. MCI. Therefore the Ethics Committee is of the opinion that a public notice be issued through newspapers to all nursing homes and hospitals that if any complaint is received against nursing home/hospitals that they are indulging in practices which are in the nature of fleecing the hapless patient, the appropriate proceedings will be initiated erring medical practitioners or the Medical Superintendent of the nursing home and hospitals. The Ethics Committee is of the unanimous opinion that the aforesaid steps should be given wide publicity including placing a circular to the said effect on the website of MCI. It is needless to say that the medical practitioners practicing in all such nursing homes and hospitals are amenable to the jurisdiction of the MCI.

29. Appeal against order dated 28.09.2010 passed by Delhi Medical Council made by Dr. Ashwini Dalmiya. (F.No.855/2010).

The Ethics Committee considered the appeal of Dr. Ashwini Dalmiya against the order dated 28.09.2010 of Delhi Medical Council. Both the parties were heard and after perusing the records, Ethics Committee feels that no case of

professional misconduct is made out against Dr. Ashwini Dalmiya. Therefore, the appeal is allowed and the order of Delhi Medical Council is set aside.

30. Accreditation of International Congress of Association of Minimal Access Surgeons of India (File No. 184/2011).

The Ethics Committee considered the matter with regard to the Accreditation of International Congress of Association of Minimal Access Surgeons of India. It appreciated the holding of such a conference, however, till to date MCI has no provision for accreditation for CME and same should be informed to the said association. The committee also felt that the organizers' attention should be drawn to Clause 6.8.1. of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, related to sponsorship of delegates.

31. Strict action required to be taken by the Medical Council of India for removing the names of the Physician (Professionals) from the Indian Medical Register (File No. 182/2011).

The Ethics Committee considered the matter and decided to ask for the complaint in a prescribed format.

32. Matter with regard to supply of alleged forged/fake information/certificate in/with the declaration forms submitted to the MCI by Medical Teachers.

The Ethics Committee considered the matter with regard to submission of alleged forged/fake information/certificate submitted by Medical Teachers along with their declaration forms and noted that one of the Id. Members had reviewed around 100 cases containing the allegations against doctors attached to the medical colleges. They have produced incorrect information/ fake certificates/declaration forms in respect of their experience, qualifications, degrees, place of work etc.

After reviewing 100 such cases, it was noticed that in some of the cases, doctors/medical practitioners have expressed their apology, in some of the cases medical practitioners have shown ignorance by the medical practitioners, in some of the cases, it was stated that the doctors have worked in the medical college but medical college have wrongly stated that they had not worked with them.

As a matter of fact, in some of the cases, the medical practitioners have produced documentary evidence in support of their reply, wherein they were employed and engaged with a particular medical college whereas the same medical college has reported to MCI that the medical practitioners have not been engaged by them. All these issues are contentious issues and some of the medical practitioners have also alleged that the medical college have given false

information on the declaration form. As these issues are contentious in nature, the Committee felt that each and every case was required to be examined separately and after due examination, an appropriate order can be passed in each of the case. Therefore, the Ethics Committee recommends that the concerned section of the MCI take all such cases where the doctor have tendered apology for the mistake committed by them. The first lot of such cases should be placed in the next meeting of the Ethics Committee.

33. Necessary action required to be taken by the Medial Council of India for removing the names from the Indian Medical Register.(F. No. 135/2011)

The Ethics Committee considered the matter and decided that the complainant should be directed to file the complaint in a prescribed format.

34. Order dated 20.05.2010 passed by the Hon'ble Delhi High Court in W.P.(c) No. 16697/2006 – Pravat Kumar Mukherjee Vs. Dr. Anindya Sunder Sarkar & Ors.

The Ethics Committee considered the Order dated 20.05.2010 passed by the Hon'ble Delhi High Court in W.P.(c) No. 16697/2006 – Pravat Kumar Mukherjee Vs. Dr. Anindya Sunder Sarkar & Ors and observed that:

1. This is an appeal filed by Sh. Pravat Kumar Mukherjee against the order of West Bengal Medical Council dated 10.02.2001. West Bengal Medical Council vide order dated 04.10.2004 dismissed the complaint of the appellant and passed the following order:

“Please refer to your letters dated 26.03.2001, nil (received by the office of WBMC on 14.12.2002), 10.02.2004 and letters, received through Email dated 10.08.2002, 13.12.2002, 19.03.2003, 21.04.2003 and your deposition before the penal and ethical cases committee of this Council on 20.06.2003 in connection with your complaint against Dr. Anindya Sunder Sarkar of Ruby General Hospital.

Please note that in terms of provision contained under Rule 8(2) of the Rules under clause (d)(i) of Sub Section (2) of Section 33 of the B M Act, 1914 (as amended), the West Bengal Medical Council at their meeting held on 14.09.2004, after considering your complaint along with explanations, averments made by the respective parties and/or their deliberating amongst the members present at the said meeting unanimously decided not to proceed further in the matter as the doctor's negligence in the matter could not be established. As the Council has no power to take action against any erring institution, we are writing to the Government to investigate and take action against the hospital.”

2. We may now briefly note the background facts, necessary for the adjudication of the present matter. Shri Sumanta Mukherjee, a student of second year B.Tech, Electrical Engineering at Netaji Subhas Chandra Bose Engineering College on 14.1.2001 was injured in an accident at about 8 a.m. in which a bus of the Calcutta Tramway Corporation dashed with the motor cycle driven by the deceased. The deceased was brought to the Ruby General Hospital, Kolkata which was close to the place of accident. It is alleged that that Dr. Sarkar and Ruby General Hospital refused to provide the treatment to the Shri Sumanta Mukherjee as the person who has brought Shri Sumanta Mukherjee to the hospital did not deposit Rupees Fifteen Thousand. It is further stated that on account of denial of treatment by the hospital and the medial practitioner resulted in death of young boy.

As noticed above, the complaint of the Appellant came to be dismissed by order by West Bengal Medical Council.

3. The appeal came to be filed before Medical Council of India on 07.10.2005. The then Ethics Committee passed the following order on 28th & 29th November 2005:

"The Ethics Committee considered the matter with regard to complaint against doctors of Ruby General Hospital as alleged by Mr. Pravat Kumar Mukherjee and noted that Mr. Pravat Kumar Mukherjee, 68 B, APC Roy Road, Flat 16/1, and 14/2, A.K. Point, Kolkata – 700009 has appealed against the decision of the West Bengal Medical Council as he is not satisfied with the decision of the W.B. Medical Council, which found no negligence against Dr. Anindya Sunder Sarkar. It also appeals to the Council that in the case alleged by Mr. Pravat Kumar Mukherjee in the National Consumer Redressal Commission. Hon'ble Forum at its judgment where the respondent was directed to pay Rs. 10 Lacs to the complainant. In view of the above the Ethics Committee feels that: -

- (i) It has to take up this case as an appeal case against the decision of the West Bengal Medical Council.*
- (ii) Dr. Anindya Sunder Sarkar against whom the complaint has been lodged should be called to appear at 12.30 pm on the 1st day of its next meeting with the para-wise comments and other documents which he wants to provide the Council in this case.*
- (iii) The Law officer of the Council is requested to go through the papers of this case and provide the Ethics Committee in writing regarding the legal points.*

The matter may be brought to the notice of the Secretary/Deputy Secretary of the Council.

A copy of the appeal documents of Mr. Pravat Kumar Mukherjee may be sent to Dr. Anindya Sunder Sarkar R/s 25/A, Vivekananda Sarani, Kolkata – 700078.

Dr. S.K. Aggrawal, Hon'ble Member of the Ethics Committee was requested to go through the case and advice to the Committee regarding this case.

The Registrar, West Bengal Medical Council may be requested to send the detailed proceedings of the case against Dr. Anindya Sunder Sarkar."

4. Thereafter the appeal was placed before the Ethics Committee on 19th & 20th January, 2006 and Ethics committee passed the following order:

"....In view of above, the Ethics Committee after detailed deliberation decided that the submission put forward by Legal Representative of Dr. Anindya Sunder Sarkar is admissible as per the MCI Professional Conduct (Etiquette and Ethics) Regulations 2002 as amended from time to time and no further action is required to be taken in this particular case and the file may be treated as closed."

5. The said order was communicated to the appellant on 04.04.2006. The final order was communicated to the appellant vide order dated 04.04.2006. The order of the Medical Council of India dated 04.04.2006 was challenged before the Hon'ble High Court of Delhi vide order no. 1669 of 2006. The Hon'ble High Court of Delhi on 20.05.2010 was pleased to pass the following order:

"1. The petitioner's appeal against an order dated 4th October, 2004 passed by the West Bengal Medical Council was dismissed by the Medical Council of India (MCI) by the impugned order dated 4.4.2006, admittedly without hearing the petitioner. Only the legal representative of the

Respondent No.1, against whom the complaint was made by the petitioner, was heard.

2. Apart from the above obvious infirmity, the impugned order also is a non-reasoned one. It simply states that "the submission put forward by Legal Representative of Dr. Anindya Sunder Sarkar is admissible....and no further action is required to be taken in this particular case." None of the submissions made by the Petitioner in the memorandum of appeal were even noticed or dealt with.

3. Having heard learned counsel for the parties, this Court is of the view that for the aforementioned reasons, the impugned order dated 4th April, 2006 passed by the MCI should be set aside. It is accordingly ordered. The Petitioner's appeal will now be restored to the MCI. The MCI will give at least 15 days advance intimation of the date of hearing to the petitioner. The petitioner is permitted to be represented at the hearing by a lawyer or some other person authorized in that behalf.

4. The MCI will give its decision in the appeal within a period of three months from today and communicate it to the petitioner within a further period of two weeks thereafter. It will be open to any party aggrieved by the said order to seek such appropriate remedies as may be available in law.

5. The petition and the application are disposed of".

6. Pursuant to the order of the High Court, notice of hearing was given to both the parties. The time schedule as mentioned in the order of the Hon'ble High Court could not be adhered to as the service of the notice was not complete and on one or two occasions, the matter was adjourned due certain unavoidable reasons. However, efforts were made to expeditious decide the matter. Ms. Maninder Acharya, learned Counsel for appellant on 15.09.2010 appeared before the Ethics Committee and submitted that appeal was preferred against West Bengal Medical Council before the Govt. of West Bengal as the appellant was unaware of the fact that Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 has been amended by which right of the appeal has been provided and Regulation 8.8 has been incorporated. She further submitted that her client was pursuing the appeal before the Govt. of West Bengal. It was also submitted that she is entitled to exclusion period spent by her client in pursuing the remedy before Govt. of West Bengal in terms of Sections 2 and 14, and Section 29(2) of Indian Limitation Act. Ms. Acharya, learned Counsel for appellant, submitted that Nation Commission elaborately examined the act and omission of the hospital and the respondent hereunder in a detailed judgment/order. The National Commission has held that there is deficiency in service on the part of the hospital as well as on the part of the respondent. Ms. Acharya has also brought to the notice of the Ethics Committee that the State of West Bengal had conducted an inquiry into the whole incident. The inquiry of Govt. of West Bengal had also found that the patient was not properly attended. Mr. Acharya stated that it was found that there had been gross negligence in providing treatment to the injured, and notice was issued by Joint Director of Health to the hospital. Ms. Acharya specially brought to the notice of Ethics Committee certain observations and findings of National Commission dated 15.04.2005 passed in original no. 90 of 2002 which are as under:

"Considering the aforesaid law, it is apparent that:

Emergency treatment was required to be given to the deceased who was brought in a seriously injured condition. There was no question of waiting for the consent of the patient or a passer-by who brought the patient to the hospital, and was not necessary to wait for consent to be given for treatment. There is nothing on record to suggest that the Doctor had informed the patient or the relatives or the person who has brought him to the hospital with regard to dangers ahead and the risk involved by

going without the operation/treatment at the earliest. Consent is implicit in such cases when patient is brought to the hospital for treatment, and a surgeon who fails to perform an emergency operation must prove that the patient refused to undergo the operation not only at the initial stage but even after the patient was informed about the dangerous consequences of not undergoing the operation.”

7. Dr. Anindya Sunder Sarkar along with Counsel Sh. Raja Chatterjee appeared on 8.2.2001 and argued that there is no merit in the appeal. Sh. Raja Chatterjee, learned Counsel for the respondent said that the patient was duly attended by the Respondent. It was also submitted that the Respondent advised immediate admission in intensive Therapy Unit under Neurosurgery Department of Ruby Hospital. It was further submitted by the learned counsel of the Respondent that the Respondent started emergency medical treatment. It was further urged that he did not refuse admission as it was absolutely internal matter of the hospital management and people bringing the patient. It was also urged that the Respondent had no role to play in functions of running the hospital and it was also stated that the Respondent was not aware about how much money is required to be deposited by a patient or his relative at the time of admission of a patient. It was stated in paragraph 5 of the written statement filed that the Respondent had merely requested the person who had brought the patient to get the patient admitted and complete the formalities at the Front Desk. It was also submitted that within minutes the person who had brought in the patient came back running in and said that he wants the patient to be shifted to Government Hospital for better treatment. It was argued that X-ray could not be taken in the short span of time and therefore, the Respondent was not aware as to whether there was any fracture in the ribs or any other parts of internally which may have caused internal bleeding to the patient.

It was further argued by Sh. Raja Chatterjee, the learned Counsel of the Respondent that the appeal is beyond the period of limitation prescribed in the Regulations. It was argued by Sh. Raja Chatterjee that under Regulation 8.8 of Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002 as amended by the Indian Medical Council (Professional Conduct, Etiquette Ethics Regulations, 2004 is not maintainable. Period prescribed for filing an appeal is 60 days and the same can be extended for another period of 60 days if sufficient cause is shown by the appellant that he could not file the appeal within the first period of 60 days. It was urged that provisions of Sections 5 and 14 of the Limitation Act, 1963 do not apply to Tribunals and quasi-judicial authority and that such provision only applied to Courts. In support of the contention, the respondent relied upon the judgment of Hon'ble Supreme Court in Sakuru vs. Tanaji reported in 1985(22ELT 327).

8. It is not in dispute that the appeal against the order of West Bengal Medical Council dated 08.10.2004 was filed by the appellant before the State Govt. of West Bengal under the provision of Section 26 of Bengal Medical Act, 1914 which reads thus:
“Section 26 – Appeal to State Government from decision of Council
(1) An appeal shall lie to the State Government from every decision of the Council under Section 17 or Section 25.
(2) Every appeal under sub-section (1) shall be preferred within three months from the date of such decision.”

During the pendency of the appeal, the right of the appeal was provided vide amended notified in 27.5.2004. A letter of Govt. of West Bengal dated 21.4.2005 has also been placed on record. Govt. of West Bengal vide letter dated 21.4.2005 has sought to know the outcome of the complaint filed by the Appellant before the National Consumer Dispute Redressal Commission. The Appellant stated on account of the above

reasons, there was delay of 10 months 3 days in filing the appeal. It was urged by the Appellant that the appellant filed the appeal in wrong forum and therefore, it was submitted that the Appellant is entitled to condonation of delay as the appeal was filed in wrong forum.

9. Section 14 of Indian Limitation Act, 1963 is quoted hereunder for ready reference:

“14. Exclusion of time of proceeding bonafide in court without jurisdiction.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

....”

In our opinion, the Appellant by virtue of Section 14 of the limitation Act is certainly entitled to provisions contained section 14 of Limitation Act, 1963. Therefore, the delay in filing the appeal is fit to be condoned on the ground that the Appellant was pursuing the appeal in good faith before wrong forum. We do not find merit in the submission that quasi judicial authority cannot invoke the Section 14 of the Limitation Act, 1963. The law on this issue is no longer res integra. The Hon'ble Supreme Court has held that the quasi judicial body can invoke Section 14 of the Limitation Act, 1963 to condone the delay. Therefore, the period taken by the appellant in pursuing the appeal before West Bengal Medical Council should be excluded. The appellant has stated in the application that the condonation of filing the appeal before the Govt. of West Bengal as he was not aware of the Ethics Regulations notified in 2004. Therefore, it is prayed the delay of 10 months 3 days is hereby condoned. Section 29(2) of Limitation Act clearly says that the provision to supply special or local laws unless there are specially excluded Regulations. In view of the above, we recommend the condonation of delay in filing the appeal.

10. The respondent has argued before the Ethics Committee that the judgment and order of National Commission is in respect of compensation to be awarded to the claimant and Hon'ble Commission has not examined the point of negligence. It has also been provided by the respondent in his written statement that he along with his assistant, Mr. Santanu Bhattacharjee, immediately engaged in the treatment of the patient, and he advised that the patient should be admitted immediately in the Intensive Therapy Unit under the Neurosurgery Department. The Gentlemen who had come with the patient accompanied by Ashis Mullick rushed out to the reception counter and within a minute returned saying that he will not admit the patient in Ruby Hospital and will admit the patient in any Govt. Hospital for better treatment. The respondent says that in spite of this he took all possible care. He further stated that he had no role in admission of the patient, and that it was the sole decision of the hospital management. Respondent further shows that he administered proper medical care to the patient.

11. Regulation 2.4 of Ethics Regulations provides as under:

“2.4 The Patient must not be neglected: A physician is free to choose whom he will serve. He should, however, respond to any 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. Provisionally or fully registered medical practitioner shall not wilfully commit an act of negligence that may deprive his patient or patients from necessary medical care.”

Therefore, Regulation 2.4 of Ethics Regulation casts a duty on the medical practitioners. In the instant case, the Respondent after having undertaken the treatment should not have withdrawn from the case. The Respondent should have informed the person who brought the injured person to the hospital that the shifting the patient can prove fatal. No such duty was performed by the Respondent. In this case, the law laid down is out in the judgment before the Hon'ble Commission which has been quoted about. The Hon'ble Supreme Court also referred to an earlier decision in the case of Pt. Parmanand Katara vs. Union of India & ors. where it was observed that the Court has emphasized the need for rendering immediate medical aid to injured persons to preserve life and the obligation of the State as well as Doctors in that regard. From the aforesaid set of circumstances, it can be held that doctors on duty failed to do what a prudent and reasonable doctor was expected to do. The National Commission has held in its detailed order that treatment was started and withdrawn and that the withdrawal cannot be justified on any ground. The patient was given treatment in the emergency room by giving moist oxygen, starting suction and by administering injection deryphylline, injection lycotin, and tetanus toxoid. There was no justifiable ground for discontinuing the treatment.

Thus, we are of the opinion that there was risk involved in shifting the patient from the hospital. The Respondent had a duty to care to the injured patient and he failed to discharge the said duty and thereby, the respondent committed professional misconduct which resulted in the loss of an innocent life.

For the reasons aforesaid, the respondent is found guilty of professional misconduct and it is recommended that his name should be removed from the Indian Medical Register for a period of one year.

35. To cancel the registration of teaching faculty of Kesar Sal Medical College, Ahmedabad for doing private practice during college teaching hours and giving wrong and misguiding declaration to MCI (F. No. 185/2011).

The Ethics Committee considered the letter dated 07.05.2011 received from Dr. Viren Shastri with regard to cancellation of registration of Dean, Dr. Manoranjana B. Shah and the teaching faculty of Kesar Sal Medical College, Ahmedabad for doing private practice during college teaching hours and giving wrong and misguiding declaration to MCI and noted that the matter is related to Dean and medical teachers who are teaching at Kesar Sal Medical College. The said matter pertains to the UG Section of the MCI, therefore, the Ethics Committee decided to refer this complaint to UG Section for verification of the complaint.

36. Anonymous complaint regarding issuing of 5 gm. Gold coin to Medical Practitioner by “BE” Pharmaceutical Company.

The Ethics Committee considered an anonymous complaint placed on the Chair by the Chairman, Board of Governors, MCI. The Ethics Committee noted that the said complaint stated that the Pharmaceutical Company namely "BE" has been giving 5 gm. Gold coin for achieving 40,000/- sale to Doctors for recommending cefixime, aceclo+para etc. apart from chem. offer in a deep interior.

The Committee noted that this is a serious complaint and it is also a violation of the Ethics Regulations namely the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002. This matter needs to be looked into and investigated by the Medical Council of India. Let a notice be issued to the concerned Pharmaceutical Company seeking more information regarding the allegations and a copy should also be forwarded to the competent authority i.e. Drug Controller General of India, New Delhi.

APPROVED BY

**(Dr. Arun Bal)
(Convenor)**

**New Delhi,
10th May, 2011.**