

No.MCI-5(3)/2007-Med./

MEDICAL COUNCIL OF INDIA

EXECUTIVE COMMITTEE

Minutes of the meeting of the Executive Committee held on Saturday, the 8th March, 2008 at 4 p.m. at Kochi (Kerala) where the members of the Adhoc Committee appointed as per the Hon'ble Supreme Court order dated 20.11.2002 were also present.

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Present:

Dr. P.C. Kesavankutty Nayar	President (Acting), Former Dean, Govt. Medical College, <u>Trivandrum (Kerala)</u>
Prof. P.N. Tandon	Former Prof. & Head of Neuro-Surgery, A.I.I.M.S, <u>New Delhi</u> and Member, Adhoc Committee appointed by the Hon'ble Supreme Court.
Dr. Ketan D. Desai	Prof. & Head, Deptt. of Urology, BJ Medical College, <u>Ahmedabad. (Gujarat)</u>
Dr. Ved Prakash Mishra	Vice-Chancellor, Datta Meghe Institute of Medical Sciences University, <u>Nagpur (Maharashtra)</u>
Dr. K.P. Mathur	Former Medical Superintendent, Dr. Ram Manohar Lohia Hospital, 77, Chitra Vihar, <u>Delhi-110092.</u>
Dr. Mukesh Kr. Sharma	Professor of General Surgery, S.M.S. Medical College, <u>Jaipur (Rajasthan)</u>
Dr. Bhanu Prakash Dubey	Prof. & Head of Department of Forensic Medicine, Gandhi Medical College, <u>Bhopal (Madhya Pradesh)</u>
Dr. S.D. Dalvi	Prof. & Head, Department of PSM, Govt. Medical College, <u>Nanded (Maharashtra)</u>
Dr. P.K. Das	Head of the Department of General Medicine, SCB Medical College, <u>Cuttack. (Orissa)</u>

Lt.Col. (Retd.) Dr. A.R.N. Setalvad] Secretary, MCI

Apologies for absence were received from Dr. S. Kantha, Member, Adhoc Committee and Dr. G.K. Thakur, Dr. V.N. Jindal, Members, Executive Committee.

1. Minutes of the Executive Committee Meeting held on 2nd February, 2008 - Confirmation of.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council confirmed the minutes of the Executive Committee meeting held on 2nd February, 2008.

2. Minutes of the last meeting of the Executive Committee – Action taken thereon.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council noted the action taken by the office on the various items included in the agenda of the Executive Committee meeting held on 2nd February, 2008.

3. Pending items arising out of the decisions taken by the Executive Committee.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council noted the list of pending items arising out of the decisions taken by the Executive Committee.

It was further decided that the Scrutiny Committee comprising of Dr. Ved Prakash Mishra and Dr. Mukesh Kumar Sharma will also look into the pending items arising out the decision taken by the Executive Committee.

4. Recognition of Sree Balaji Medical College & Hospital, Chennai for the award of MBBS degree granted by Bharath University.

Read: The Council's Inspectors report (08th & 09th February, 2008) for recognition of Sree Balaji Medical College & Hospital, Chennai for the award of MBBS degree granted by Bharath University.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (08th & 09th February, 2008) and noted the following:-

1. Clinical material is inadequate in terms of bed occupancy (Daily average 67%; Day of inspection 54%). No special investigations were carried out on the day of inspection.
2. Static and mobile x-ray units are inadequate as only 3 static & 2 mobile units are available against requirement of 6 each at this stage.
3. Inspection team has not been shown any arrangement for teaching postmortem to students. Fire arm specimens are not available in the museum of Forensic Medicine.
4. Other deficiencies / remarks are in the main report.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided not to recognize Sree Balaji Medical College & Hospital, Chennai for the award of MBBS degree granted by Bharath University.

5. Approval of S.B.K.S. Medical Instt. & Research Centre, Piparia, Vadodara for the award of MBBS degree granted by Gujarat University.

Read: The Council Inspectors report (08th & 09th February, 2008) for approval of S.B.K.S. Medical Instt. & Research Centre, Piparia, Vadodara for the award of MBBS degree granted by Gujarat University.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (08th & 09th February, 2008) and decided to recommend that S.B.K.S. Medical Instt. & Research Centre, Piparia, Vadodara be approved for the award of MBBS degree granted by Gujarat University with an annual intake of 150 (One Hundred Fifty) students.

6. Approval of Meenakshi Medical College Hospital & Research Institute, Enathur, Kanchipuram for the award of MBBS degree granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai.

Read: The Council Inspectors report (21st & 22nd February, 2008) for approval of Meenakshi Medical College Hospital & Research Institute, Enathur, Kanchipuram for the award of MBBS degree granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (21st & 22nd February, 2008) and decided to recommend that Meenakshi Medical College Hospital & Research Institute, Enathur, Kanchipuram be approved for the award of MBBS degree granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai with an annual intake of 100(One Hundred) students.

7. Govt. Medical College, Bhavnagar- Renewal of permission for admission of 3rd batch of MBBS students against increased intake i.e. from 50 to 100 for the academic session 2008-2009.

Read: The Council Inspectors report (14th & 15th February, 2008) for renewal of permission for admission of 3rd batch of MBBS students against increased intake i.e. from 50 to 100 for the academic session 2008-2009 at Govt. Medical College, Bhavanagar alongwith the letter dated 7.3.2008 received from the Dean regarding appointment of the Residents in the institute.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council inspectors report (14th & 15th February, 2008) alongwith the letter dated 7.3.2008 received from the Dean regarding appointment of the Residents in the institute and decided to defer the consideration of the matter till a detailed compliance showing joining of the Residents is received.

8. Mahatma Gandhi Medical College & Research Institute, Pondicherry- Renewal of permission for admission of 2nd batch of MBBS students against increased intake i.e. from 100 to 150 for the academic session 2008-2009.

Read: The Council 's Inspectors report (14th & 15th February, 2008) for renewal of permission for admission of 2nd batch of MBBS students against increased intake i.e. from 100 to 150 for the academic session 2008-2009.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (14th & 15th February, 2008) and decided to recommend to the Central Govt. to renew the permission for admission of 2nd batch of MBBS students against the increased intake i.e. from 100 to 150 at Mahatma Gandhi Medical College & Research Institute, Pondicherry for the academic session 2008-09.

9. Sree Gokulam Medical College & Research Foundation, Trivandrum- Renewal of permission for admission of 4th batch of students for the academic session 2008-2009.

Read: The Council 's Inspectors report (22nd & 23rd February, 2008) for renewal of permission for admission of 4th batch of students for the academic session 2008-2009.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (22nd & 23rd February, 2008) and decided to recommend to the Central Govt. to renew the permission for admission of 4th batch of 50 (Fifty) MBBS students at Sree Gokulam Medical College & Research Foundation, Trivandrum for the academic session 2008-09.

10. Continuance of recognition of MBBS degree granted by NTR University of Health Sciences, Vijayawada in respect of students being trained at Siddhartha Medical College, Vijayawada.

Read: The compliance verification inspection report (05th & 06th February, 2008) for continuance of recognition of MBBS degree granted by NTR University of Health Sciences, Vijayawada in respect of students being trained at Siddhartha Medical College, Vijayawada alongwith letter dated 15.7.2004 from the Joint Secretary, Govt. of India, Ministry of Health & F.W.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the compliance verification inspection report (05th & 06th February, 2008) alongwith letter dated 15.7.2004 from the Joint Secretary, Govt. of India, Ministry of Health & F.W. and decided that recognition of MBBS degree granted by Dr. N.T.R. University of Health Sciences, Vijayawada in respect of students being trained at Siddhartha Medical College, Vijayawada be continued restricting the number of admissions to 100 (One Hundred) students annually.

11. Continuance of recognition of MBBS degree granted by Calicut University, Calicut in respect of students being trained at Govt. Medical College, Kozhikode.

Read: The compliance verification inspection report (05th & 06th February, 2008) for continuance of recognition of MBBS degree granted by Calicut University, Calicut in respect of students being trained at Govt. Medical college, Kozhikode.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the compliance verification inspection report (05th & 06th February, 2008) and noted the following:-

1. The shortage of teaching faculty is 21.4% (i.e. 66 out of 307) as under:-

Professors (3) - Biochemistry -1, Orthopaedics -1, Radiodiagnosis-1

Associate Professors (27) - Anatomy-3, Physiology-3, Biochemistry-2, Pharmacology-2, Pathology-3, Microbiology-1, Forensic Medicine-2, Community Medicine-2, General Medicine-3, TB & Chest-1, Psychiatry-1, General Surgery-1, Orthopaedics-1, ENT-1, Radiodiagnosis-1.

Assistant Professors (28) - Anatomy-2, Physiology-4, Lecturer-Biophysics-1, Biochemistry-1, Pharmaceutical Chemist-1, Pathology-1, Community Medicine-2, General Medicine-2, General Surgery-10, Radiodiagnosis-4.

Tutors (8) - Anatomy-1, Pharmacology-2, Community Medicine-5.

2. The shortage of Residents is 9.6% (i.e. 18 out of 186) as under:-

Senior Residents (14)- General Medicine-4, Paediatrics-1, Dermatology-2, Psychiatry-1, Orthopaedics-2, Radiodiagnosis-4.

Junior Residents (4) – TB & Chest-3, Psychiatry-1.

3. Dr. V.R. Rajendran, Medical Superintendent of main teaching hospital possesses only 3 years of administrative experience against requirement of 10 years as per Regulations.
4. There is deficiency of 1 Unit in General Surgery as only 7 Units are available against requirement of 8.
5. Indoor registration counter is not cross linked with OPD registration.
6. Central suction is not available in all ICU except Medical ICU.
7. Kitchen facility is not available. Dietician is not available. There is no provision to supply special diet to patients.
8. Central laboratory does not have Microbiology section. Entire clinical work is carried out in the department.
9. Number of books in departmental libraries of Psychiatry & Anaesthesia are inadequate.
10. At R.H.T.C., Lady Medical Officer is not available. Audiovisual aids are not provided.
11. There is no department of Microbiology available in the Central Lab.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to give 2 (two) months time to the authorities of Govt. Medical College, Kozhikode to rectify the above deficiencies and submit the compliance within the stipulated period.

12. Approval of Tirunelveli Medical College, Tirunelveli for the award of MBBS degree granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai against the increased intake i.e. from 100 to 150.

Read: The inspection report (22nd & 23rd February, 2008) for approval of Tirunelveli Medical College, Tirunelveli for the award of MBBS degree granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai against the increased intake i.e. from 100 to 150.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (22nd & 23rd February, 2008) and decided that Tirunelveli Medical College, Tirunelveli be approved for the award of MBBS degree against the increased number of seats i.e. from 100 to 150 granted by The Tamilnadu Dr. M.G.R Medical University, Chennai.

13. Increase in MBBS seats from 90 to 150 at Rajendra Institute of Medical Sciences, Ranchi Jharkhand -Regarding.

Read: The application for increase in MBBS seats from 90 to 150 at Rajendra Institute of Medical Sciences, Ranchi, Jharkhand received through the Central Govt. vide letter dated 1st February, 2008 for the academic year 2008-09.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that the application of Rajendra Institute of Medical Sciences, Ranchi, Jharkhand has been forwarded by the Central Government vide its letter dated 1st February, 2008 which is after the last date

for sending the application by the Central Government to the Council as per Regulations – i.e. 30th September. It was further observed that clause 3 of the 'Qualifying Criteria' prescribed in Part II – "Scheme for permission of the Central Government to increase the admission capacity in any course of study or training (including postgraduate course of study or training) in the existing medical colleges/institutions" reads as under:-

"Letter of University's permission for increasing the admission capacity in any course of study or Training (including a postgraduate course of study or Training) in seats in the existing medical college/institution has been obtained by the medical college/institution from the university to which it is affiliated".

However, the institution has only submitted a No Objection Certificate from the affiliating university – i.e. Ranchi University, Ranchi. No Letter of Permission for increasing the admission capacity from 90 to 150 obtained from Ranchi University has been submitted by the institution alongwith the application.

It was further observed that the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council in its earlier meeting held on 12.11.2005 while considering the inspection report of the inspection carried out on 8th and 9th September, 2005 had decided to initiate action under section 19 of the Indian Medical Council Act, 1956 recommending withdrawal of recognition for the existing intake – i.e. 90. The decision of the Executive Committee duly approved by the General Body of the Council at its meeting held on 18th February, 2006 was communicated to the Central Government vide letter dated 17th May, 2006.

The compliance submitted by the institute vide its letter dated 13th June, 2006 was verified by the Council Inspectors at the inspection carried out in January, 2007. The inspection report has been sent for observation and rectification to the Institute, Vice-Chancellor of the University and State Government vide Council letter dated 3.2.2007. The Institute vide its letter dated 21st May, 2007 had submitted a compliance for which a compliance verification inspection was scheduled on 27th and 28th December, 2007. However, the institute requested for deferment of the inspection vide letter dated 24.12.2007 as the Director was out of station and was likely to return on second week of January, 2008.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further observed that the Central Government vide its letter dated 7th May, 2007 has also directed the institute, meanwhile, not to admit the students for the academic year 2007-08 till such time the deficiencies are rectified and the rectification report is accepted by the Central Government. The Committee further observed that the Dean of the college vide his letter dated 23.10.2007 has submitted a list of 90 students admitted by their college for the academic session 2007-08 inspite of the Central Government letter.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to return the application to the Central Government, Ministry of Health & F.W. recommending disapproval of the scheme for increase of seats in MBBS course from 90 to 150 at Rajendra Institute of Medical Sciences, Ranchi, Jharkhand u/s 10A of the I.M.C. Act, 1956. It was further decided that an immediate inspection to verify the compliance submitted by the institute should be carried out.

It was further decided by the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council that a discharge notice u/s 10B be issued in respect of the students admitted for the academic year 2007-08 contrary to the directions of the Central Government vide its letter dated 7th May, 2007.

14. Establishment of new medical colleges/Increase in seats – Requests received from the applicant Societies/Trusts to conduct inspection for LOI/LOP after 31st December, 2007.

Read: The Central Govt. letter dated 1st February, 2008 with regard to request establishment of new medical colleges/Increase in seats – requests received from the applicant Societies/Trusts to conduct inspection for LOI/LOP after 31st December, 2007.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that as per the scheduled prescribed in Establishment of Medical College Regulations, 1999, the last date for sending the recommendations by the Central Government for issue of Letter of Intent is 31st December. This regulation is statutory Regulation, mandatory and binding in character and are required to be followed by all the authorities.

It was further observed that vide order dated 12.01.2005 in the case of Mridul Dhar (Minor) & Anr. Vs. Union of India & Ors. (W.P. [C] No. 206 of 2004), Hon'ble Supreme Court has directed as under:-

“
35.

.....
14. Time schedule for Establishment of New Colleges or to increase intake in existing colleges shall be adhered to strictly by all concerned.
15. Time schedule provided in Regulations shall be strictly adhered to by all concerned failing which defaulting party would be liable to be personally proceeded with.
.....”

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to reiterate its earlier decision taken at its meeting held on 2.2.2008 to conduct the combined LOI/LOP inspection with regard to the request received from the applicant Society/Trust to conduct such inspection if received through the Central Government before 15th March, 2008 for the academic year 2008-09 for starting of new medical colleges/increase of seats and the inspection report be placed before the Adhoc Committee/Executive Committee for its consideration.

15. Increase in MBBS seats from 59 to 100 at Institute of Medical Sciences, Varanasi, U.P. by Banaras Hindu University.

Read: The Central Govt. letters dated 08th October, 2007 & 18th February, 2008 with regard to increase in MBBS seats from 59 to 100 at Institute of Medical Sciences, Varanasi, U.P. by Banaras Hindu University for the academic year 2008-09.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the reply received from the Institute through the Central Government vide letter dated 18th February, 2008 alongwith the opinion received from the Council Advocate in the matter which reads as under:-

“.....However, at this stage, on account of paucity of time and the compulsion for the querist-Council to meet the time stipulations contained in the statutory time schedules for processing of such applications for grant of permission, having regard to the facts and circumstances of this Institution of Banaras Hindu University, I am of the opinion that in the present case the letters of the Ministry of Human Resource Development and of the Ministry of Health & F.W. be taken as the permission regarding the desirability and feasibility in terms of sub-clause (2) of the Qualifying Criteria and the Council may proceed further in processing the application of the Banaras Hindu University for increase of seats from 59-100 in the MBBS course.”

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to process the application by carrying out an inspection of the institute.

16. Removal of name of Dr. M.P. Kamboj from the Indian Medical Register.

Read: The letter dt. 29.01.2008 received from the Registrar, Haryana Medical Council, Chandigarh with regard to removal of name of Dr. M.P. Kamboj from the Indian Medical Register.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council noted the letter dated 29.01.2008 received from the Registrar, Haryana Medical Council, Chandigarh intimating that Dr. M.P. Kamboj bearing Regn. No. HN-2740, dated 17.4.2007 has been removed from the Register of Registered Medical Practitioners due to being convicted by the Hon'ble CJM, Hisar pronounced on 10.1.2008 committing offence u/s 4(3) and 5(1)(b) read with Rule 9 of PNDT Act. The Committee decided to remove the

name of above-mentioned doctor from the Indian Medical Register and also give intimation in this regard to all the State Medical Councils in the country.

17. Removal of name of Dr. Suresh Chand Gupta from the Indian Medical Register.

Read: The letter dt. 04.02.2008 received from the Registrar, Rajasthan Medical Council, Jaipur with regard to removal of name of Dr. Suresh Chand Gupta from the Indian Medical Register.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council noted the letter dated 04.02.2008 received from the Registrar, Rajasthan Medical Council, Jaipur intimating that Dr. Suresh Chand Gupta bearing Regn. No. 12407, dated 25.02.1989 found guilty due to stealing of human organs and his name has been removed from the Register of Registered Medical Practitioners. The Committee decided to remove the name of above-mentioned doctor from the Indian Medical Register and also give intimation in this regard to all the State Medical Councils in the country.

18. Removal of name of Dr. Y.S. Mathur from the Indian Medical Register.

Read: The letter dt. 17.01.2008 received from the Registrar, Rajasthan Medical Council, Jaipur with regard to removal of name of Dr. Y.S. Mathur from the Indian Medical Register.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council noted the letter dated 17.01.2008 received from the Registrar, Rajasthan Medical Council, Jaipur intimating that Dr. Y.S. Mathur bearing Regn. No. 989, dated 26.06.1963 has expired on 11.01.2008 and his name has been removed from the Register of Registered Medical Practitioners. The Committee decided to remove the name of above-mentioned doctor from the Indian Medical Register and also give intimation in this regard to all the State Medical Councils in the country.

19. Admission of 1st year MBBS students at Era's Lucknow Medical College & Hospital, Lucknow in the academic year 2007-08 – Regarding.

Read: The matter with regard to admission of 1st year MBBS students at Era's Lucknow Medical College & Hospital, Lucknow in the academic year 2007-08.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the reply received from the institute alongwith the report of the Committee on 'Fairness and Transparency in Admission Procedure' and decided to obtain the clarifications from the Committee for 'Fairness and Transparency in Admission Procedure' on the reply submitted by the Institute particularly on the issues raised by the institution in its reply particularly with reference to para 15, 23, 30, 32, 33 & 36.

20. Admission of 1st year MBBS students admitted by various medical colleges/institutions in the state of Andhra Pradesh below the prescribed marks in PMT/Entrance examination, as per Regulation 5(ii) of the Graduate Medical Education, 1997.

Read: The matter with regard to admission of 1st year MBBS students by various medical colleges/institutions in the state of Andhra Pradesh below the prescribed marks in PMT/Entrance examination, as per Regulation 5(ii) of the Graduate Medical Education, 1997.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the letter dated 16.2.2008 of the Registrar, Dr. NTR University of Health Sciences, Vijayawada with regard to admission of 1st year MBBS students by various medical

colleges/institutions in the state of Andhra Pradesh below the prescribed marks in PMT/Entrance examination than the minimum cut off limits prescribed under Regulation 5(ii) of the Graduate Medical Education, 1997 and noted that the University had adopted the following procedure for allotment of seats as per the notification issued by the Govt. of Andhra Pradesh:-

“4. Allotment of seats:

The seats to be allotted in each Un-aided Non-Minority Professional Institution under these rules, for Admission of Candidates shall be classified as :-

- (xv) *Category-A Seats (50% of the sanctioned intake of the seats)
“Competent Authority Seats”-The seats shall be filled through counseling by the Committee for Admissions appointed by the Competent Authority as per merit from the candidates who have qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation.*

Category-B (25% of the sanctioned intake of the seats)-“EAMCET ranking based Management Seats”:-The seats shall be filled through counseling by the Committee for Admissions appointed by the Competent Authority as per merit from the candidates who have qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation as agreed to by the A.P. Private Medical and Dental Colleges Managements Association Hyderabad.

Category-C (25% of the sanctioned intake of the Seats)-“Managements Seats”: The seats shall be filled by the Managements of individual colleges or Committee of Managements in the order of merit based on the applications received following a transparent procedure as specified in these rules.”

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further observed that Regulation 5(ii) of the Graduate Medical Education Regulations, 1997 pertaining to 'Eligibility Criteria' for "Selection of Students" reads as under:-

*“5(ii) In case of admission on the basis of a competitive entrance examination, a candidate for admission to medical course must have obtained not less than 50% marks in English and 50% marks in Physics, Chemistry and Biology taken together, both at qualifying and competitive examinations;
Provided further that in respect of candidates belonging to Schedule Caste/Schedule Tribes and Other Backward Classes (OBCs) the marks obtained be read as 40% instead of 50%.”*

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to approve the decision taken by the Council Office in light of Regulation 5(ii) of the Graduate Medical Education Regulations, 1997 in the matter and communicated to the Govt. of Andhra Pradesh.

21. Electronic transfer of Certificate of Good Standing (CGS) information.

Read: The email letter dated 19.02.2008 from (Ms) Eadaoin Flynn, Intelligence and Internation Liasion Manager with regard to transfer of Certificate of Good Standing (CGS) information.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the email letter dated 19.02.2008 from (Ms) Eadaoin Flynn, Intelligence and Internation Liasion Manager with regard to transfer of Certificate of Good Standing (CGS) information and observed that the General Medical Council (GMC) has been exchanging Certificate of Good Standing with a number of other medical regulators for over a period of 3 years. The electronic exchange of Certificate of Good Standing would enable the Councils to fulfill its mandate to promote, protect and maintain the health and safety of the public by ensuring proper standards in the practice of medicine.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to approve the Memorandum of Understanding to be signed between the Medical

Council of India and General Medical Council on information exchange has shown below:-

Introduction

The (insert organization name) and the General Medical Council (GMC) both being the competent authorities for the regulation of medical doctors, have agreed to set up an Electronic CGS/CCPS Agreements, the purpose of which is to facilitate the mutual exchange of Certificate of Good Standing (CGS)/Certificates of Current Professional Status (CCPS), as provided for by art.11 of the Council Directive 2005/36/EC (as appropriate).

The agreement will commence on (insert date)

Pre-authorisation from applicant for registration

- *The applicant for registration will request a CGS/CCPS from the regulator and pay any fee required and the regulator will send it automatically to the other regulator, or*
- *The regulator will make the request directly to the other regulator, in this case the medical regulator will be responsible for obtaining the prior authorization (from the applicant for registration) to obtain a certificate of good standing and the applicant for registration will be advised to pay the fee for the CGS/CCPS. The CGS/CCPS will be released to the other regulator when the fee is received.*

In sending a direct request for CGS/CCPS information, the medical regulator will confirm that authorization from the applicant for registration is held. The medical regulator receiving this confirmation will be entitled to accept that as evidence that valid authorization has been collected.

Requesting a CGS/CCPS

The medical regulator requesting a CGS/CCPS will send an encrypted email request to the appropriate mailbox.

- *The GMC's mailbox will be RegEEAVerification@gmc-uk.org or GMCGoodStanding@gmc-uk.org.*
- *The GMC's contact will be*
- *The (insert organization name) mailbox will be (insert mailbox details)*
- *The (insert organization name) contacts will be (insert name and contact details)*

The email request will include the following:

- *Unique Reference or Registration number as appropriate (if known).*
- *Family name.*
- *Other names.*
- *Primary medical qualification (including year and university).*
- *Date of birth (if known).*
- *Postgraduate qualification or confirmation the applicant for registration is on the specialist register and area of specialty (if known).*
- *Where a direct regulator-to-regulator request is made, confirmation that an authorization to contact the medical regulator directly has been obtained from the applicant.*

Upon receipt of a request for a CGS/CCPS

The medical regulator will check the mailbox each working day (excluding public holidays and weekends/non-working days). The medical regulator will search the register and will send an electronic file containing the details requested. This will be either.

- *An electronic copy of the CGS/CCPS produced by the regulator's registration system, or*
- *An email listing the agreed information and an electronic copy of the CGS/CCPS as an attachment. If the required information is not on the CGS/CCPS it will be supplied in the email.*

[The response will be encrypted so that unauthorized intervention can be avoided.]

PLEASE CONFIRM IF YOU HAVE ENCRYPTION FACILITIES IN PLACE.

The medical regulator will aim to deliver CGS/CCPS within five working days from the day of receipt of the request (from the applicant for registration or the regulator) or will acknowledge receipt with an outline of why the request cannot be delivered (eg, file lost).

Where a CGS/CCPS cannot be issued, the medical regulators will provide information about the individual's registration in accordance with its privacy legislation and procedural rules.

For the General Medical Council a CGS/CCPS indicates that:

- The applicant for registration is not the subject of any pending or open complaint or charge before the GMC
- The applicant for registration has not been found guilty of any current or open unprofessional conduct or discipline.
- The applicant for registration is not subject to any current order of discipline involving revocation, suspension or probation the GMC is aware of
- The applicant for registration has not been found guilty of any criminal act which may be relevant to a licensing decision.
- The GMC is not aware of any record of malpractice judgement, award or settlement involving the applicant for registration
- The GMC is not aware of this applicant for registration having had hospital privileges revoked or suspended
- The applicant for registration is not currently subject to competence or health review or monitoring by the GMC
- The applicant for registration is not the subject of any declaration of pending or open complaints to the GMC.

For (insert organization name) a CGS/CCPS indicates that the applicant for registration:

- | | |
|---|-----|
| • Is not the subject of any pending or open complaint or charge | N Y |
| • Has not been found guilty of any current or open unprofessional conduct or discipline | N Y |
| • Is not subject to any current order of discipline involving revocation, suspension or probation | N Y |
| • Has not been found guilty of any criminal act which may be relevant to a licensing decision | N Y |
| • Has no record of any malpractice judgements awards or settlements | N Y |
| • Has not had hospital privileges revoked or suspended | N Y |
| • Is not currently subject to competence or health review or monitoring | N Y |
| • Is not the subject of any declaration of pending or open complaints. | N Y |

Signed

Anthony Egerton, Assistant Director or Registration
General Medical Council

Date.....

Signed.....

Date

22. Minutes of the Meeting of Registration and Equivalence Committee held on 14.12.2007 – Approval of.

Read: The minutes of the meeting of Registration and Equivalence Committee held on 14.12.2007.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council approved the minutes of the meeting of Registration and Equivalence Committee held on 14.12.2007 except Item No.7 & 8.

Item No. 7: Request for grant of permanent registration by (1) Mr. Zamir Ahmad Wani (2) Mr. Shahid Hussain Mir.

Item No. 8: Request for grant of permanent registration by (1) Dr. T.V.R.Kondala Rao (2) Dr. Nageshwara Rao (3) Dr. Gurram Srinivasa Rao and (4) Dr. Riaz Basha.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to obtain legal opinion on the above items and directed the Office to resubmit these items alongwith legal opinion at its next meeting.

23. Setting Up a Computerized System for UG, PG, Diary & Dispatch, Eligibility.

Read: The matter with regard to setting up a computerized system for UG, PG, Diary & Dispatch, Eligibility.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that as a part of computerization initiative at Medical Council of India, a number of functions like IMR, Faculty, Accounts, Registration, etc., have already been successfully computerized. Computer Section in association with other sections of MCI is working at present to enable online application for registration certificates and status tracking facility for students about their applications at MCI website.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided that the following key functions be taken up next for computerization and the various activities in the section, including issue of any certificates/letters to candidates/colleges respectively through the computerized system wherever applicable:

1. Eligibility Certificate online
2. Under Graduate Section (U.G)
3. Post Graduate Section (P.G)
4. Diary & Dispatch

The scope of work for each of the section mentioned above is detailed in brief herewith.

1. Eligibility Certificate online

This certificate is issued to the Indian students desiring to apply/study from a foreign medical institution after verification of their 12th or appropriate school final results.

The following functionality of the system at present shall be computerized under .net program to make the system online:

1. Receive applications at Eligibility Desk
2. Forward to Accounts department for generation of receipt of fees paid by the candidate.
3. Creation of a separate file for each application
4. Verification of Application field by the candidate
5. Verification of Supporting documents filed by the candidate
6. Preparation of First Note, consisting of key information, from the application
7. Seek clarification directly from the candidate in case of any requirement
8. Obtain approval as per the hierarchy defined for each certificate
9. Printing of certificates and signatures
10. Dispatch/handing over the candidate.

The software shall be developed keeping in mind the following security requirements:

1. The application details, the status of verification and the dates of any activity along with the person who is updating the system shall be captured.
2. The system shall have a complete file tracking facility with the dates captured and approval status captured electronically along with physical movement of files.
3. The system will have a complete username/password based security system, with roles and responsibilities fixed for individual users.
4. The system shall maintain an audit trail with each and every activity in the system, whether adding an application, modifying or taking a print out of the certificate shall be recorded in the system with the username, password, date and time.

5. Only authorized persons shall generate the certificates from the system.
6. The system shall have a provision to include scanned pictures of candidates, in case decided by MCI, so that the same can be printed on the certificate.

2. Under Graduate Section (U.G)

The UG section maintains the data related to the various medical colleges offering under graduate courses in India, right from their application for setting up a new medical college to their present status. This data is maintained in multiple formats at present, thereby making it quite cumbersome and time-consuming to obtain critical information quickly like status report of any college, remarks of the last inspection, the next inspection due date, etc.,

It is proposed that the UG section is computerized with the following broad components:

- 1) Create a database consisting of all medical colleges of India and their present status, covering
 - a) Name
 - b) Type of management – Govt, Trust, Society, Private, etc.,
 - c) Address, City, State
 - d) Contact details like Telephone Number, Email, Fax, Website
 - e) University
 - f) Year of inception
 - g) Name of the present Principal, Registrar, Dean, etc., and their contact details – Address, Telephone, Email, Mobile, etc., and their date of joining
 - h) Date of last LOI/LOP
 - i) First Sanctioned Intake
 - j) Inspection details (from last inspection to the first inspection, wherever possible)
 - i) College Requisition for inspection with proposed inspection date
 - ii) MCI decision on inspection and date at EC
 - iii) Inspection date
 - iv) Type of inspection (Periodical / Renewal / Recognition / C.V./etc)
 - v) Inspectors Name
 - vi) Deficiencies if any
 - vii) Remarks
 - viii) Any communication from MCI post inspection to either college/Central Government/State/University/etc.,
 - k) Any information related to Renewal – request, remarks, dates, etc.,
 - l) Increased intake u/s 10 A
 - m) Next periodic inspection due
 - n) Fees paid to MCI, if any
- 2) Create a computerized workflow for handling applications for new colleges and it shall cover right from application by the new college with MCI, and include capturing of all details as per point (1) depending on the progress of the application in various stages.
- 3) Create a computerized workflow for request from colleges for Renewal of an existing college for individual batches and it shall cover right from application by the college with MCI, and include capturing of all details as per point (1) depending on the progress of the application in various stages.
- 4) Create a computerized workflow for handling requests from colleges for increase in in-take and it shall cover right from application by the new college with MCI, and include capturing of all details as per point (1) depending on the progress of the application in various stages.

3. Post Graduate Section (P.G)

The PG section maintains the data related to the various post graduate courses offered by medical colleges in India, right from their application for a new course to their present status. This data is maintained in multiple formats at present, thereby making it quite cumbersome and time-consuming to obtain critical information quickly like status report of any college, remarks of the last inspection, the next inspection due date, etc.,

It is proposed that the PG section is computerized with the following broad components:

1. Create a database consisting of all medical colleges of India and their present status, covering
 - a) Name of the college
 - b) State
 - c) Ess. Certificate Issuing Date
 - d) Consent of Affiliation Date
 - e) PG Course
 - f) First Sanctioned Intake
 - g) Inspection details (from last inspection to the first inspection, wherever possible)
 - i) College Requisition for inspection with proposed inspection date
 - ii) MCI decision on inspection and date at EC
 - iii) Inspection date
 - iv) Type of inspection (Periodic / Renewal / Recognition / C.V./etc)
 - v) Inspectors Name
 - vi) Deficiencies if any
 - vii) Remarks
 - viii) Any communication from MCI post inspection to either college/Central Government/State/University/etc.,
 - h) Increased intake u/s 10 A
 - i) Next periodic inspection due
 - j) Fees paid to MCI, if any
2. Create a computerized workflow for handling applications for new courses by colleges and it shall cover right from application by the college with MCI, and include capturing of all details as per point (1) depending on the progress of the application in various stages.
3. Create a computerized workflow for handling requests from colleges for increase in in-take for a P.G. course and it shall cover right from application by the new college with MCI, and include capturing of all details as per point (1) depending on the progress of the application in various stages.

4. Diary & Dispatch

This will create an electronic diary & dispatch system in place of the present manual system maintained in registers, tracking inward and outward movement of all documents and files within various sections of MCI and to external parties associated with MCI.

This System shall ensure capture of the following relates to any Dak or File:

For Incoming Dak or File: Date of Receipt, From (Name of the Section with MCI / External Organisation / Person / etc.), Subject Description, Reference No and Date, Keywords if any, etc.,

For Outgoing Dak or File: Whether an existing file / Dak OR NEW, Date of sending, To (Name of the Section with MCI / External Organisation / Person / etc.), Subject Description, Reference No and Date, Keywords if any

This system will facilitate instant tracking of any Dak or File. One can generate report based on date, subject, file number, section, etc., and it shall also generate a Dak register for the reference of the individual section. The receipt entries at the receiving section shall also be put in this computer software so that MCI can do away with the manual registers altogether.

Provision shall also be made to attach electronic version of the papers, be it scanned images or document files, to individual dak and file reference, as a first step to building a paper-less office at MCI.

The execution of this project would cover,

- (a) System Requirements Study & Analysis
- (b) Prototype Design, Demonstration to MCI and Approval
- (c) Software Applications Design and Programming
- (d) Implementation at MCI
- (e) Training to MCI staff and officers for operations on their own

It was further observed that an integrated approach for the development of the total computerization of the office is desirable so as to make Council not only a true paperless office but also for quick and speedy disposal of pending applications or request for the information received in the Council Office. For that purpose, it would be desirable to have a Local Area Network / Wide Area Network within the Council based on three tier structure application software which would also enable the public to interact with the Council dynamically.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided that the software development and implementation be outsourced. The project can be completed within 10-12 months and the estimated cost of the software development and implementation shall be approximately 14-15 lakhs. The software shall be developed using infrastructure available with MCI. It has been envisaged that this shall be implemented in the Local Area Network of MCI first; Later on a provision shall be made to facilitate the students to apply online for eligibility certificate and submit documents along with the online application at the website of MCI. It was further decided to authorize the President (Acting) to constitute a Sub-Committee for carrying out the entire project of LAN/WAN in which outside experts from NIC/IIT and other similar organizations may also be invited. It was further decided to create a post of Project Director in the Office of the Council who will look after the implementation of the project at a consolidated salary of Rs. 50,000/- p.m.

24. Approval of Minutes of the Teachers Eligibility Qualifications Sub-Committee held on 1st October, 2007.

Read: The Minutes of the Teachers Eligibility Qualifications Sub-Committee Committee held on 1st October, 2007.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council approved the minutes of the Teachers Eligibility Qualifications Sub-Committee Committee held on 1st October, 2007.

25. Appointment of Honorary/Part-time Teachers in medical colleges.

Read: The Central Govt. letter dated 11th February, 2008 with regard to appointment of Honorary/Part-time Teachers in medical colleges.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that as per Remark 2 of the General Remarks of Schedule-II of Minimum Standard Requirements for the Medical College for 50/100/150 admissions annually Regulations, 1999, **the teaching staff of all departments of a medical college, shall be full time.** These Regulations, being statutory, are mandatory and binding in character and are required to be followed by all the authorities.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further observed that the General Body of the Council at its meeting held on 17.10.1995 had decided to extend the Honorary/part time system for a further period of 5 years beyond 30th June, 1997. The Central Government vide its letter No. V.11025/41/95-ME(UG), dated 27/29th March, 1996, accepting the recommendations of the Council had extended the Honorary/part time system for a further period of 5 years w.e.f. 30th June, 1996. It was further observed that vide Council letter dated 25th May, 2000, the Council had already requested the Central Government to withdraw administrative instructions for extending the system of appointing Honorary/part time teaching staff in medical institutions in lieu of the Minimum Standard Requirements for a medical college for 50/100/150 admissions Regulations, 1999. However, the Central Government vide letter dated 23rd October, 2001 had decided to extend the system of appointment of Honorary/part time teachers in medical colleges for a further period of 5 years from the date of issue of letter (23rd October, 2001). In the above cited letter, it was further stated that in the meanwhile, all the colleges/institutions shall also take all possible steps to appoint teachers on regular basis as laid down in the "Minimum Standard Requirements for a Medical College for 50/100/150 Admissions Regulations, 1999" and the 'Postgraduate Medical Education Regulations, 2000".

It was further observed by the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council that the period of 5 years granted for extension vide letter dated 23rd October, 2001 has already expired in October, 2006 and no communication was issued by the Central Government in this regard.

It was further observed that the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council that the Hon'ble Supreme Court in the case of State of Kerala Vs. T.P. Roshna (1979) SCC 580 had observed as under:-

"The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses".

The above mentioned observations of the Hon'ble Supreme Court were reiterated in the subsequent case of MCI Vs. State of Karnataka (1998) 6 SCC 131. These observations were re-emphasized by the Constitution Bench of the Hon'ble Supreme Court in para 57 of the judgment in the case of Dr. Preeti Srivastava Vs. State of M.P., wherein it has been laid down as under:-

".....57. In the case of Medical Council of India Vs. State of Karnataka, a Bench of three Judges of this Court has distinguished the observations made in Nivedita Jain. It has also disagreed with Ajay Kumar Singh v. State of Bihar and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana (SCC at p.580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning....."

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided that the contentions raised by the Central Government in its letter dated 11th February, 2008 are not permissible being contrary to the statutory Regulations which are mandatory and binding in character and therefore the Hon./Part-time teachers in medical colleges cannot be accepted as teaching faculty in the medical

colleges/institution. It was further decided that the decision of the Adhoc Committee/Executive Committee be communicated to all the Health & Medical Education Secretaries, Directors of Medical Education of all the States, Vice-Chancellors of all the Universities/Deemed Universities and Principals/Deans of all the medical institutions in the country.

26. Change of Present Logo of Medical Council of India.

Read: The matter with regard to change of present logo of Medical Council of India.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to invite designs on a wide basis for the change in Logo from various organizations like National Institute of Designs etc. It was further decided that an open competition be held to change the Logo of the Council by issuing the Press Release inviting the designs for changing the Logo of the Council.

27. Bhaskar Medical College, Yenkapally – Inspection to verify the teaching faculty, residents and clinical material.

Read: The Council Inspectors report (20th February, 2008) to verify the teaching faculty, residents and clinical material facilities available at Bhaskar Medical College, Yenkapally.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (20th February, 2008) and observed as under:-

1. The shortage of teaching staff required at present stage is as under:-

(a) Faculty 37.34% (i.e. 62 out of 166)

Assoc. Prof. 17	(Anatomy-1, Physiology-1, Biochemistry-1, Pharmacology-1, Pathology-1, Forensic Medicine-1, Community Medicine-2, General Medicine-2, Paediatrics-1, TB & Chest-1, General Surgery-2, Anaesthesia-2, Radio-Diagnosis-1)
Asstt.Prof.-12	(Anatomy-1, Pathology-1, Community Medicine-3, General Medicine-3, General Surgery-3, Orthopaedics-1)
Tutors-33	(Anatomy-4, Physiology-3, Biochemistry-2, Pharmacology-5, Pathology-9, Microbiology-1, Forensic Medicine-3, Community Medicine-6)

(b) The shortage of Resident is 77.87% (i.e. 88 out of 113) as under:-

Sr. Resident-15	(General Medicine-2, Psychiatry-1, General Surgery-3, Anaesthesia-6, Radio-Diagnosis-3)
Jr.Resident-73	(General Medicine-18, Paediatrics-9, TB & Chest-1, Dermatology-1, Psychiatry-2, General Surgery-18, Orthopaedics-9, ENT-3, Ophthalmology-1, Obst. & Gynae-9, Dentistry-2)

2. Clinical material is grossly inadequate in terms of OPD attendance (240), bed occupancy (35.09%), nil normal deliveries & non cytopathology and Histopathology investigations on the day of inspection. Over 50% of the patients in the hospital were of no clinical significance and did not require admission. 30% of the patients were admitted only on the day of inspection or a day before. Treatment notes were not entered in most of the case sheets. There were no signatures of faculty on most of the case sheets. On enquiring from the staff nurses, it was observed that the faculty was not taking regular rounds in the wards.

3. Six OTs were under renovation and not in use.

4. Other deficiencies/remarks pointed out in the inspection report.

In view of the gross deficiencies of teaching faculty & clinical material which are the two most important parameters of medical education, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to issue a show cause notice to the institute why the admissions to the MBBS course for the academic session 2008-2009 should not be stopped. Copy of the letter be also marked to DME of the concerned State Govt., Registrar of the University to which the college is affiliated and also to the member of the MCI representing the State where the college is located.

28. Continuance of recognition of MBBS degree granted by The Tamil Nadu Dr. M.G.R. Medical University, Madras in respect of students being trained at P.S.G. Institute of Medical Sciences, Coimbatore.

Read: The Council's inspectors report (20th February, 2008) for continuance of recognition of MBBS degree granted by The Tamil Nadu Dr. M.G.R. Medical University, Madras in respect of students being trained at P.S.G. Institute of Medical Sciences, Coimbatore.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council Inspectors report (20th February, 2008) and noted the following:-

1. The shortage of teaching staff required at present stage is as under:-
 - a) The shortage of teaching faculty is 13.7% as under:-
 - i) Professor- 1(Dentistry-1)
 - ii) Assoc. Prof.- 5 (Anatomy-2, Physiology-2, Microbiology-1)
 - iii) Asstt. Prof. 9(Lecturer in Biophysics-1, Microbiology-1, Pharma-Chemist-1, Forensic Medicine-1, Lecturer in Epidemiology-1, Radiology-2, Orthopaedics-1, Anaesthesiology-1)
 - iv) Tutor- 5 (Microbiology-1, Pharmacology-2, Comm. Medicine-2).
 - b) The shortage of Residents is 34.1% as under:-
 - i) Sr.Resident 9 (Gen.Med.-4, TB & Chest-1, Psychiatry-1, Surgery-2, OBG-1).
 - ii) Jr.Resident 20 (Medicine-4, Skin & VD-1, Ophthalmology-2, Paediatrics-2, Surgery-8, OBG-3).
 - (c). Non-medical teachers in Anatomy are >30% and in Biochemistry are >50% which is not as per Regulations.
2. With increase in OPD attendance and bed occupancy, increase in other parameters like Radio-Diagnosis and Laboratory investigations are expected. No such increase is observed in this institute.
3. Other deficiencies as pointed out in the inspection report.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to issue a show cause notice to the institute why the recognition for the award of MBBS degree should not be withdrawn u/s 19 of the IMC Act, 1956 and further decided that the institute be asked to submit its compliance within a period of two months. Copy of the letter be also marked to DME of the concerned State Govt., Registrar of the University to which the college is affiliated and also to the member of the MCI representing the State where the college is located.

29. Proposal for opening of new Kendriya Bhandar Grocery and Consumer retail stores in the Office Complex of MCI at Dwarka – New Delhi.

Read: The letter dated 22.02.2008 received from the Managing Director, Kendriya Bhandar with regard the proposal for opening of new Kendriya Bhandar Grocery and Consumer retail stores in the Office Complex of MCI at Dwarka – New Delhi.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the letter dated 22.02.2008 received from the Managing Director, Kendriya Bhandar with regard the proposal for opening of new Kendriya Bhandar Grocery and Consumer retail stores in the Office Complex of MCI at Dwarka and did not agree for opening of the same in the office complex of MCI.

30. Complaint against Dr. K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi.

Read: The matter with regard to Complaint against Dr. K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi alongwith the recommendation of the Ethics Committee.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council approved the following recommendation of the Ethics Committee:-

"The Ethics Committee considered the matter with regard to complaint against Dr. K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi. The Ethics Committee after discussing of the matter is of the opinion that Dr. K.N. Aggarwal be asked to be present before the Ethics Committee at 11.00 a.m. at its second day of next meeting of the Medical Council of India with all the records of its studies including the design of the study, protocol of study and any necessary permission he has taken from the competent authority etc. The letter received from the Chairperson, National Commission for Protection of Child Rights, Govt. of India may also be sent to Dr. K.N. Aggarwal asking him to give his parawise comments to the issues raised in the letter."

Dr. K.N. Aggarwal was called on 11.09.2007 at 11.00.a.m vide Council's letter dated 10.09.2007.

The matter was considered by the Ethics Committee at its meeting held on 10th & 11th September, 2007 and the decision was as under:-

"The Ethics Committee considered the matter with regard to complaint against Dr.K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi and decided to call Dr.K.N. Aggarwal to appear before the Ethics Committee on 11.9.2007. The statement of Dr.K.N. Aggarwal is as under:-

STATEMENT OF DR. K.N. AGARWAL

I, Dr. K.N. Agarwal did my MBBS from K.G. Medical College, Lucknow in 1959 and D.C.H. in 1961 from Delhi University and M.D. (Paed.) in 1969 and MD (Paed. Haematology) from University Uppsala in 1965. My Date of Birth is 05.07.1937. My registration number is U.P. Medical Council 8861 of 1959.

I have received the letter from the Medical Council of India requesting me to be present on 11.9.2007. I have attended the Ethics Committee meeting on the same date. I am submitting my written statement and submitting the copies of proformas filled up during the medical examination of the children and also copy of one email and a list containing my communication with the school alongwith the names of the members of the team who conducted the medical examination of the children. In addition to my written submissions, I would like to state the following:

It is regretted that the National Commission for Protection of Child Rights on the basis of media reports instituted an enquiry against me rather than asking the Medical Council of India whether such a medical examination is in any way non-ethical.

Q. What is this Health Care & Research Association for adolescent?

Ans. Health Care & Research Association is a voluntary organization which only helps in conduct examination of school children.

Q. *Is it Delhi based?*

Ans. *Yes.*

Q. *Is it registered?*

Ans. *Yes, with Delhi Government.*

Q. *Under which Act it is registered?*

Ans. *Its an N.G.O.*

Q. *What type of research you conduct?*

Ans. *We were only doing to see whether the children growth is normal and development is normal.*

Q. *Do you have some papers on this?*

Ans. *I have published on rural children mental development in relation to their nutrition.*

Q. *Do you have any branch?*

Ans. *No*

Q. *Was it a part of research on behalf of health care?*

Ans. *This is a voluntary work. This was not related to any research. I was operated for cancer prostate and have chronic renal failure since 2005. My wife Prof. Mrs. Agarwal had very poor vision due to chronic Uveitis which got corrected in April, 2007. Thus, both of us wanted to do some voluntary work and decided to start helping school children.*

Q. *Whether the data generated out of the school medical examination is the property of school or yours.*

Ans. *Schools.*

Q. *Who are the other members of the team?*

Ans. *1.Prof.Dr.(Mrs.) D.K. Agarwal, MBBS, DCH, MD (Retd. Prof. Head of Paediatrics), Instt. of Medical Sciences, Varanasi (2) Dr. P.C. Khanduja, MD, DCH, worked in this school for 10 years as Medical School Officer and was also Head of the department. (3) Dr.Mrs. Mamta Raj, MBBS with 2 years training in U.K. (4) Dr. Manish Srivastav, MD (5) Mrs. Vinay Goyal, Social Worker (6) Mr. Sanjay Chauhan, Driver who measures weight & height.*

Q. *Was this survey carried out on behalf of the research care association for adolescent?*

Ans. *This was a voluntary work planned and done by us.*

Q. *Any study protocol was submitted to the school?*

Ans. *The form for the children examination was prepared in the school with the help of the school nurse. The school filled all the details of the child.*

Q. *Can you give the registration documents/constitution of the health care research association?*

Ans. *At this moment, I have not brought it. I will send you by courier.*

Q. *Did the school constituted any Ethics Committee before taking this children examination?*

Ans. *Yes, the Principal told me that she will discuss in school-teachers council and then inform me.*

Q. *Have they informed you?*

Ans. *They informed me through email by the Principal and mobile phone by the school nurse requesting to complete the health examination within July.*

Q. *What is the name of the Principal?*

Ans. *Mrs. Vijaya Subramanyam (Offtg. Principal)*

Q. *Do you have Principal's phone number etc.?*

Ans. *I don't have now.*

I appeal to the Committee to issue clear instructions for conducting school health examination to detect "disability" in time. This will go a long way to create a healthy generation.

Sd/-

(Dr. K.N. Agarwal)

11.9.2007

The Ethics Committee after detailed discussion unanimously decided to call the Principal, Sardar Patel School, New Delhi in the first day of its next meeting at 3.00 p.m. with all the documents pertaining to the case including copies of communication received from Dr. K.N. Aggarwal and other doctors and permission etc. granted by the school for conducted the said

study. Also copies of the protocol submitted to the school may also be submitted. The Principal, Sardar Patel School, New Delhi may be informed that Medical Council of India have taken up this investigation, pursuant to written complaint against Dr. K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi. Therefore she is requested to attend without fail.

The Ethics Committee further decided to call the other doctors who have taken part in the said study along with Dr. K.N. Aggarwal viz. Prof. Dr.(Mrs.) D.K. Agarwal (2) Dr. P.C. Khanduja, which also Medical Officer of the school (3) Dr. (Mrs.) Mamta Raj (4) Dr. Manish Srivastav (5) Mrs. Vinay Goyal, Social Worker. The addresses of all the concerned persons may be obtained from Dr. K.N. Aggarwal. They may be requested to present before the Ethics Committee on second day at 12.00 noon in its next meeting."

As per above decision, the Principal, Sardar Petal School, New Delhi was requested to appear before the Ethics Committee on 15.10.2007 at 3.00 p.m. with all the documents pertaining to the case including copies of communication received from Dr. K.N. Aggarwal and other doctors, permission etc. granted by the school for conducting the said study and copies of the protocol submitted to the school vide Council's letter dated 28.09.2007.

Dr. K.N. Aggarwal had requested to intimate Dr. (Mrs.) D.K. Agarwal, Dr. P.C. Khanduja, Dr.(Mrs.) Mamta Raj, Dr. Manish Srivastav, & Mrs. Vinay Goyal, Social Worker to present before the Ethics Committee on 16.10.2007 at 12:00 Noon and also requested to send the addresses of the above mentioned doctors/persons vide Council's letter dated 28.09.2007.

The matter was considered by the Ethics Committee at its meeting held on 15th & 16th October, 2007 and the decision was as under:-

"The Ethics Committee considered the matter with regard to complaint against Dr. K.N. Aggarwal sent by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi and noted that Mrs. Vijaya Subramaniam, Vice-Principal, Sardar Patel School has been appeared before the Ethics Committee and given a statement which is as follow:-

"Statement of Mrs. Vijaya Subramaniam

The Vice-Principal Mrs. Vijaya Subramaniam, who was the officiating Principal at the time of incident appeared before the Ethics Committee on 15.10.2007 alongwith the parent member Mr. Vijay Mehta. The Ethics Committee records its appreciation for the Vice-Principal, Sardar Patel Vidyalaya, New Delhi as well as the parent member for their co-operation in this case. From the oral disposition of the Principal it appears that on 25.5.2007, Dr. K.N. Agarwal had written a letter to the Principal, Sardar Patel Vidyalaya, Lodi Road, New Delhi, a copy of which has been submitted. Based on this letter and verbal request, the Principal, Sardar Patel Vidyalaya, New Delhi has fixed a date for the physical examination.

The Ethics Committee put certain questions to the Principal and the answers are as follows:-

Q. Do you have a system of regular annual medical examination in your school?

A. Yes, each year we have certain focus, one year it was eye check up and another year was dental check up and ENT examination also and for the past few years we did not have this kind of check up so when the request came from Dr. K.N. Agarwal, we allowed him to conduct the check-up.

Q. In the letter of Dr. Agarwal, it has been mentioned that the medical examination will include simple medical examination and height/weight measurements. The examination will detect children who have growth failure and obesity. Any other illness will also be screened. Have the team under Dr. K.N. Agarwal submitted to you any study protocol in writing before the study was approved and undertaken.?

A. No

Q. Did they at any time tell the school that study/medical examination would involve examination of external genitalia in case of male students and breast size in the case of female students?

A. No

Q. The school authorities did not know before the health check up that such kind of examination would be carried out?

A. No

Q. Was the subject of medical examination informed to the students as well as the parents by the school authorities?

A. The general practice is that we informed the parents of the primary school children and not the senior school and based on the letter we assumed that it is a simple medical examination and we did not inform.

Q. On the day of examination, was it announced that the examination will be voluntary basis or all students were asked to go for medical examination?

A. Medical examination is always voluntary in the school and the students were informed much before hand about the medical examination check-up.

Q. Before the medical check-up/examination were conducted, were the children informed that the medical check up would involve examination of external genitalia in case of male students and breast size in the case of female students and does the school authority know about this point?

A. No

Q. Does the school have a medical officer in its employment?

A. We have a female nurse which is in accordance with the Delhi School Education Act and Rules which states that either a doctor or a female nurse, in the case of co-educational schools, not less than one lady doctor or female nurse shall be appointed.

Q. According to the same Act & Rules, recognized schools are to appoint a medical officer, part time or full time and also a compounder part time and full time basis and it is in addition to this in the case of co-educational school not less than one lady doctor or female nurse should be appointed. What did you say about this?

A. Doctor parents and alumni students who are doctors visit the school when needed. The dental and eye check ups in the previous years were conducted by doctor parents.

Q. Why did the school go ahead with the proposal received from Dr.K.N.Agarwal regarding this medical check up?

A. In his letter Dr.K.N. Agarwal stated an old association with the school and one of the members of his team Dr.Khanduja, was a parent of the school and was also associated with the school clinic on a part time basis. So therefore in total good faith and trust we allowed this team to conduct the medical check-up.

The Ethics Committee would like to thank the Vice-Principal who was the officiating Principal at the time of medical check up.

(Mrs.Vijaya Subramaniam)
Vice-Principal,
Sardar Patel Vidyalaya,
New Delhi”.

The Ethics Committee further noted that Dr.(Mrs.) D.K. Agarwal was asked to appear before the Ethics Committee on 16.10.2007 and she has appeared. She has given a statement before the Ethics Committee which is as follows:-

“16.10.2007

Statement of Dr. (Mrs.) D.K. Agarwal)

I, Dr. (Mrs. D.K. Agarwal), did my MBBS from Patiala Medical College, Punjab in the year 1963. I did my DCH Paediatrics from Delhi University in the year 1965 and also did M.D. (Community Medicine) from BHU, Varanasi in the year 1973. I am registered with the Punjab Medical Council, bearing Registration No.6609. My Date of Birth is 01.09.1939. I am submitting my written statement to the Ethics Committee.

This was a simple medical examination which was done on voluntary basis. During our examination children were willing, very happy and no child ever objected. None of the girl child felt embarrassed. Rather they were asking questions whether they will gain some more height or not. There was no prepared proforma rather the school nurse was given a hand written note containing name, age, Date of Birth and examination to be done for each children prepared a list of children of each class with heading for clinical examination, weight & height and other examination. The school only printed the list and handed over at the start of work, on both the days. On the first day, the children of class 6 and perhaps some for the class 7 were examined. On second day before starting the session the school children of other classes were collected in the school assembly hall for briefing for the health examination. The boys and girls were addressed separately in the presence of the school teachers and the school Principal. The children were requested to ask questions or any other detailed information they wanted to know. But none of the children asked any question or resented for medical examination. The examination was conducted on 2 days. The examination of boys and girls were examined separately by the female and male doctors. The children were feeling happy and comfortable and none of them ever objected for examination. On 3rd day when we reached the school gate we found the Star News people waiting and surrounding our vehicles, we thought that since we were doing this voluntary health examination they wanted to air into the media for our good work. One lady Ms. Ratna Sukhla of Star News wanted to know the details of the examination which we told her as we were doing in the school. Then one of us went inside the school to talk the Principal about why media persons have come. She told us that there might be some problem in the medical examination then we told her we will not work today and we will work only after the problem is solved. So we left the school and all the details of examination were left with the school only. But we requested the school to provide us with a photocopy of all the papers.

Question – Was any protocol submitted to the school for the examination?

Ans.- No, since there was no set protocol. Simple one line detailed containing all the information were given in the hand written paper to be typed by the school. So that class wise list with name, date of birth and clinical examination could be prepared for the examination.

Question – Were the school children informed before hand that the medical examination would also include of external breast size in the girls?

Ans.- I don't think any breast examination was done for any child. Only auscultation with the stethoscope was done for heart and lungs examination for which no information needs to be given as it is a simple routine examination.

Question- Whether the examination could tell about the age of the girls?

Ans.- No sir, only the examination could tell whether the girls can gain some more height during the coming years, which could be answered approximately.

Thanking you,

Sd/-
(Dr.(Mrs.) D.K. Agarwal)”

The Ethics Committee further noted that Dr. P.C. Khanduja, which also Medical Officer of the school was asked to appear before the Ethics Committee on 16.10.2007 and he has appeared. He has given a statement before the Ethics Committee which is as follows:-

“16.10.2007

Statement of Dr. P.C. Khanduja

I, Dr. P.C. Khanduja did my MBBS from Jabalpur in the year 1962. I did my DCH from the Maulana Azad Medical College, Delhi in the year 1965 and did my M.D. in the year 1968 from the same institute. I am registered with the Delhi Medical Council, bearing Registration No.13188. My Date of Birth is 30.09.1937.

I am submitting a written to the Hon'ble Ethics Committee today i.e. 16.10.2007
Thanking you,

Sd/-
(Dr. P.C. Khanduja)

The Ethics Committee further noted that Dr. (Mrs.) Mamta Raj was asked to appear before the Ethics Committee on 16.10.2007 and she has appeared. She has given a statement before the Ethics Committee which is as follows:-

“16.10.2007

Statement of Dr. (Mrs.) Mamta Raj

I, Dr.(Mrs.) Mamta Raj, did my MBBS from Gajra Raja Medical College, Gwalior in the year 1993 My registration No. is 12655 from Madhya Pradesh Medical Council. My Date of Birth is 20.12.1965.

Regarding this case I was invited by Dr. K.N. Agarwal to participate in this voluntary medical health check up on the second day in Sardar Patel School, Delhi. As I was not working after I came back from U.K. in April, 2006. When I went to the school with the medical team, the room had all necessary equipment for measuring height and weight and there was a list of the children (class wise) given by the school. There was a staff nurse who was there all the time. Girls were being examined by the lady doctors (Dr. (Mrs.) D.K. Agarwal and myself), I was mostly involved in writing the examination and the boys were examined by the male doctors(Dr. K.N. Agarwal & Dr. P.C.Khanduja). The boys were briefed by Dr. K.N. Agarwal and the girls were briefed Dr.(Mrs.) D.K. Agarwal prior to the medical check up in the auditorium. During the examination the girls were not hesitant and were willingly coming for the examination, they were being asked about the refractive errors and any other medical problems if they had. The medical examination was being done for each girl separately in a cubicle. The girls were not undressed and we did not touch any part of their body, simple auscultation for Cardiac and respiratory system was done.

Sd/- (Dr. (Mrs.) Mamta Raj)”

The Ethics Committee further noted that Mrs. Vinay Goyal, Social Worker. was asked to appear before the Ethics Committee on 16.10.2007 and she has appeared. She has given a statement before the Ethics Committee which is as follows:-

“16.10.2007

Statement of Mrs.Vinay Goyal

I am Mrs. Vinay Goyal. I am a house wife. My husband is a business man. I just work voluntarily in my spare time in our community centre. I was involved in this matter just help to the examination team as an assistant at Sardar Patel School. Dr. K.N. Aggarwal known to me for the last 6 years.

Sd/-
(Mrs. Vinay Goyal)”

The Ethics Committee also noted that Dr. Manish Srivastav was asked to appear before the Ethics Committee on 16.10.2007, but he did fail to do so.

The Ethics Committee after discussing this case and decided to call Dr. Manish Srivastava to be present at 11.00 a.m. on its next meeting. The final decision in this case shall be taken on that day."

As per above decision, Dr. K. N. Aggarwal was requested to intimate Dr. Manish Srivastav to be present before the Ethics Committee on 18.12.2007 at 11:00 a.m and also requested to send the address of Dr. Srivastava vide Council's letter dated 5.12.2007.

The matter was considered by the Ethics Committee at its meeting held on 17th December, 2007 and the decision was as under:-

"The Ethics Committee considered matter with regard to complaint against Dr. K.N.Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi and decided this case should be taken for final hearing in its next meeting. The Ethics Committee further noted that Dr. Manish Srivastav who was called on 18.12.2007 should be called on the first day of its next meeting."

As per decision, Dr. Manish Srivastava was requested to appear before the Ethics Committee on 21.01.2008 at 3:00 p.m. vide Council's letter dated 17.01.2008.

The matter was considered by the Ethics Committee at its meeting held on 21st & 22nd January, 2008 and the decision was as under:-

"The Ethics Committee considered the matter with regard to complaint against Dr. K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi.

It may be stated that the Council received a letter dated 9/10.08.2007 from Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi with regard to complaint against Dr. K.N. Aggarwal, in which it is stated as under :-

"Pursuant to media reports regarding mis-conduct during medical examination of students in Sardar Patel School in Delhi, the Commission appointed a two member Committee to inquire into the matter :

The Committee during the inquiry found the following :

1. That Dr. K. N. Aggarwal vide letter dated 25.05.2007 to the Principal of SPV proposed medical check up for students. He wrote that " The examination will include simple medical examination and height/weight measurements. These will include detect children who have growth failure and obesity. Any other illness will also be screened."

During medical exam, in addition to growth patterns, obesity and nutrition status, throat, lungs, heart and abdomen examination, the presence of hernia and hydrocele was also examined.

2. The Medical Council of India is requested to let the Commission know the following :
 - I) *Whether MCI has any prescribed ethical guidelines for conducting such health surveys ? If so, a copy of same may be provided.*
 - II) *Whether Dr. K.N. Aggarwal's study (on behalf of the 'Health Care and Research Association for Adolescents) followed any ethical guidelines for conducting such a survey?*
 - III) *Whether an ethics committee was constituted and if so, who were the members in the committee and what were the procedures recommended by them before the survey was actually carried out?*
 - IV) *The propriety of conducting Genital/SMR tests without clarifying purpose, manner and procedure and without taking specific consent of the guardians of the minors.*

The information on the above may be submitted to the Committee within one month."

The above matter was considered by the Ethics Committee at its meeting held on 10th & 11th August, 2007 and the decision was as under :-

"The Ethics Committee considered the matter with regard to complaint against Dr. K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi. The Ethics Committee after discussing of the matter is of the

opinion that Dr. K.N. Aggarwal be asked to be present before the Ethics Committee at 11.00 a.m. at its second day of next meeting of the Medical Council of India with all the records of its studies including the design of the study, protocol of study and any necessary permission he has taken from the competent authority etc. The letter received from the Chairperson, National Commission for Protection of Child Rights, Govt. of India may also be sent to Dr. K.N. Aggarwal asking him to give his parawise comments to the issues raised in the letter.”

Dr. K.N. Aggarwal was called on 11.09.2007 at 11.00.a.m vide Council's letter dated 10.09.2007.

The matter was considered by the Ethics Committee at its meeting held on 10th & 11th September, 2007 and the the decision was as under:-

“The Ethics Committee considered the matter with regard to complaint against Dr.K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi and decided to call Dr.K.N. Aggarwal to appear before the Ethics Committee on 11.9.2007. The statement of Dr.K.N. Aggarwal is as under:-

STATEMENT OF DR. K.N. AGARWAL

I, Dr. K.N. Agarwal did my MBBS from K.G. Medical College, Lucknow in 1959 and D.C.H. in 1961 from Delhi University and M.D. (Paed.) in 1969 and MD (Paed. Haematology) from University Uppsala in 1965. My Date of Birth is 05.07.1937. My registration number is U.P. Medical Council 8861 of 1959.

I have received the letter from the Medical Council of India requesting me to be present on 11.9.2007. I have attended the Ethics Committee meeting on the same date. I am submitting my written statement and submitting the copies of proformas filled up during the medical examination of the children and also copy of one email and a list containing my communication with the school alongwith the names of the members of the team who conducted the medical examination of the children. In addition to my written submissions, I would like to state the following:

It is regretted that the National Commission for Protection of Child Rights on the basis of media reports instituted an enquiry against me rather than asking the Medical Council of India whether such a medical examination is in any way non-ethical.

Q. What is this Health Care & Research Association for adolescent?

Ans. Health Care & Research Association is a voluntary organization which only helps in conduct examination of school children.

Q. Is it Delhi based?

Ans. Yes.

Q. Is it registered?

Ans. Yes, with Delhi Government.

Q. Under which Act it is registered?

Ans. Its an N.G.O.

Q. What type of research you conduct?

Ans. We were only doing to see whether the children growth is normal and development is normal.

Q. Do you have some papers on this?

Ans. I have published on rural children mental development in relation to their nutrition.

Q. Do you have any branch?

Ans. No

Q. Was it a part of research on behalf of health care?

Ans. This is a voluntary work. This was not related to any research. I was operated for cancer prostate and have chronic renal failure since 2005. My wife Prof. Mrs. Agarwal had very poor vision due to chronic Uveitis which got corrected in April, 2007. Thus, both of us wanted to do some voluntary work and decided to start helping school children.

Q. Whether the data generated out of the school medical examination is the property of school or yours.

Ans. Schools.

Q. Who are the other members of the team?

Ans. 1.Prof.Dr.(Mrs.) D.K. Agarwal, MBBS, DCH, MD (Retd. Prof. Head of Paediatrics), Instt. of Medical Sciences, Varanasi (2) Dr. P.C. Khanduja, MD, DCH, worked in this school for 10 years as Medical School Officer and was also Head of the department. (3) Dr.Mrs. Mamta Raj, MBBS with 2 years training in U.K. (4) Dr. Manish Srivastav, MD (5) Mrs. Vinay Goyal, Social Worker (6) Mr. Sanjay Chauhan, Driver who measures weight & height.

Q. Was this survey carried out on behalf of the research care association for adolescent?

Ans. This was a voluntary work planned and done by us.

Q. Any study protocol was submitted to the school?

Ans. The form for the children examination was prepared in the school with the help of the school nurse. The school filled all the details of the child.

Q. Can you give the registration documents/constitution of the health care research association?

Ans. At this moment, I have not brought it. I will send you by courier.

Q. Did the school constituted any Ethics Committee before taking this children examination?

Ans. Yes, the Principal told me that she will discuss in school-teachers council and then inform me.

Q. Have they informed you?

Ans. They informed me through email by the Principal and mobile phone by the school nurse requesting to complete the health examination within July.

Q. What is the name of the Principal?

Ans. Mrs. Vijaya Subramanyam (Offtg. Principal)

Q. Do you have Principal's phone number etc.?

Ans. I don't have now.

I appeal to the Committee to issue clear instructions for conducting school health examination to detect "disability" in time. This will go a long way to create a healthy generation.

Sd/-
(Dr. K.N. Aggarwal)
11.9.2007

The Ethics Committee after detailed discussion unanimously decided to call the Principal, Sardar Patel School, New Delhi in the first day of its next meeting at 3.00 p.m. with all the documents pertaining to the case including copies of communication received from Dr. K.N. Aggarwal and other doctors and permission etc. granted by the school for conducted the said study. Also copies of the protocol submitted to the school may also be submitted. The Principal, Sardar Patel School, New Delhi may be informed that Medical Council of India have taken up this investigation, pursuant to written complaint against Dr. K.N. Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi. Therefore she is requested to attend without fail.

The Ethics Committee further decided to call the other doctors who have taken part in the said study along with Dr. K.N. Aggarwal viz. Prof. Dr.(Mrs.) D.K. Agarwal (2) Dr. P.C. Khanduja, which also Medical Officer of the school (3) Dr. (Mrs.) Mamta Raj (4) Dr. Manish Srivastav (5) Mrs. Vinay Goyal, Social Worker. The addresses of all the concerned persons may be obtained from Dr. K.N. Aggarwal. They may be requested to present before the Ethics Committee on second day at 12.00 noon in its next meeting."

As per above decision, the Principal, Sardar Petal School, New Delhi was requested to appear before the Ethics Committee on 15.10.2007 at 3.00 p.m. with all the documents pertaining to the case including copies of communication received from Dr. K.N. Aggarwal and other doctors, permission etc. granted by the school for conducting the said study and copies of the protocol submitted to the school vide Council's letter dated 28.09.2007.

Dr. K.N. Aggarwal had requested to intimate Dr. (Mrs.) D.K. Agarwal, Dr. P.C. Khanduja, Dr. (Mrs.) Mamta Raj, Dr. Manish Srivastav, & Mrs. Vinay Goyal, Social Worker to present before the Ethics Committee on 16.10.2007 at 12:00 Noon and also requested to send the addresses of the above mentioned doctors/persons vide Council's letter dated 28.09.2007.

The matter was considered by the Ethics Committee at its meeting held on 15th & 16th October, 2007 and it was reads as under:-

"The Ethics Committee considered the matter with regard to complaint against Dr. K.N. Aggarwal sent by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi and noted that Mrs. Vijaya Subramaniam, Vice-Principal, Sardar Patel School has been appeared before the Ethics Committee and given a statement which is as follow:-

"Statement of Mrs. Vijaya Subramaniam

The Vice-Principal Mrs. Vijaya Subramaniam, who was the officiating Principal at the time of incident appeared before the Ethics Committee on 15.10.2007 alongwith the parent member Mr. Vijay Mehta. The Ethics Committee records its appreciation for the Vice-Principal, Sardar Patel Vidyalaya, New Delhi as well as the parent member for their co-operation in this case. From the oral disposition of the Principal it appears that on 25.5.2007, Dr. K.N. Agarwal had written a letter to the Principal, Sardar Patel Vidyalaya, Lodi Road, New Delhi, a copy of which has been submitted. Based on this letter and

verbal request, the Principal, Sardar Patel Vidyalaya, New Delhi has fixed a date for the physical examination.

The Ethics Committee put certain questions to the Principal and the answers are as follows:-

Q. Do you have a system of regular annual medical examination in your school?

A. Yes, each year we have certain focus, one year it was eye check up and another year was dental check up and ENT examination also and for the past few years we did not have this kind of check up so when the request came from Dr.K.N. Agarwal, we allowed him to conduct the check-up.

Q. In the letter of Dr.Agarwal, it has been mentioned that the medical examination will include simple medical examination and height/weight measurements. The examination will detect children who have growth failure and obesity. Any other illness will also be screened. Have the team under Dr.K.N. Agarwal submitted to you any study protocol in writing before the study was approved and undertaken.?

A. No

Q. Did they at any time tell the school that study/medical examination would involve examination of external genitalia in case of male students and breast size in the case of female students?

A. No

Q. The school authorities did not know before the health check up that such kind of examination would be carried out?

A. No

Q. Was the subject of medical examination informed to the students as well as the parents by the school authorities?

A. The general practice is that we informed the parents of the primary school children and not the senior school and based on the letter we assumed that it is a simple medical examination and we did not inform.

Q. On the day of examination, was it announced that the examination will be voluntary basis or all students were asked to go for medical examination?

A. Medical examination is always voluntary in the school and the students were informed much before hand about the medical examination check-up.

Q. Before the medical check-up/examination were conducted, were the children informed that the medical check up would involve examination of external genitalia in case of male students and breast size in the case of female students and does the school authority know about this point?

A. No

Q. Does the school have a medical officer in its employment?

A. We have a female nurse which is in accordance with the Delhi School Education Act and Rules which states that either a doctor or a female nurse, in the case of co-educational schools, not less than one lady doctor or female nurse shall be appointed.

Q. According to the same Act & Rules, recognized schools are to appoint a medical officer, part time or full time and also a compounder part time and full time basis and it is in addition to this in the case of co-educational school not less than one lady doctor or female nurse should be appointed. What did you say about this?

A. Doctor parents and alumni students who are doctors visit the school when needed. The dental and eye check ups in the previous years were conducted by doctor parents.

Q. Why did the school go ahead with the proposal received from Dr.K.N.Agarwal regarding this medical check up?

A. In his letter Dr.K.N. Agarwal stated an old association with the school and one of the members of his team Dr.Khanduja, was a parent of the school and was also associated with the school clinic on a part time basis. So therefore in total good faith and trust we allowed this team to conduct the medical check-up.

The Ethics Committee would like to thank the Vice-Principal who was the officiating Principal at the time of medical check up.

(Mrs.Vijaya Subramaniam)
Vice-Principal,
Sardar Patel Vidyalaya,
New Delhi”.

The Ethics Committee further noted that Dr.(Mrs.) D.K. Agarwal was asked to appear before the Ethics Committee on 16.10.2007 and she has appeared. She has given a statement before the Ethics Committee which is as follows:-

“16.10.2007

Statement of Dr. (Mrs.) D.K. Agarwal)

I, Dr. (Mrs. D.K. Agarwal), did my MBBS from Patiala Medical College, Punjab in the year 1963. I did my DCH Paediatrics from Delhi University in the year 1965 and also did M.D. (Community

Medicine) from BHU, Varanasi in the year 1973. I am registered with the Punjab Medical Council, bearing Registration No.6609. My Date of Birth is 01.09.1939. I am submitting my written statement to the Ethics Committee.

This was a simple medical examination which was done on voluntary basis. During our examination children were willing, very happy and no child ever objected. None of the girl child felt embarrassed. Rather they were asking questions whether they will gain some more height or not. There was no prepared proforma rather the school nurse was given a hand written note containing name, age, Date of Birth and examination to be done for each children prepared a list of children of each class with heading for clinical examination, weight & height and other examination. The school only printed the list and handed over at the start of work, on both the days. On the first day, the children of class 6 and perhaps some for the class 7 were examined. On second day before starting the session the school children of other classes were collected in the school assembly hall for briefing for the health examination. The boys and girls were addressed separately in the presence of the school teachers and the school Principal. The children were requested to ask questions or any other detailed information they wanted to know. But none of the children asked any question or resented for medical examination. The examination was conducted on 2 days. The examination of boys and girls were examined separately by the female and male doctors. The children were feeling happy and comfortable and none of them ever objected for examination. On 3rd day when we reached the school gate we found the Star News people waiting and surrounding our vehicles, we thought that since we were doing this voluntary health examination they wanted to air into the media for our good work. One lady Ms. Ratna Sukhla of Star News wanted to know the details of the examination which we told her as we were doing in the school. Then one of us went inside the school to talk the Principal about why media persons have come. She told us that there might be some problem in the medical examination then we told her we will not work today and we will work only after the problem is solved. So we left the school and all the details of examination were left with the school only. But we requested the school to provide us with a photocopy of all the papers.

Question – Was any protocol submitted to the school for the examination?

Ans.- No, since there was no set protocol. Simple one line detailed containing all the information were given in the hand written paper to be typed by the school. So that class wise list with name, date of birth and clinical examination could be prepared for the examination.

Question – Were the school children informed before hand that the medical examination would also include of external breast size in the girls?

Ans.- I don't think any breast examination was done for any child. Only auscultation with the stethoscope was done for heart and lungs examination for which no information needs to be given as it is a simple routine examination.

Question- Whether the examination could tell about the age of the girls?

Ans.- No sir, only the examination could tell whether the girls can gain some more height during the coming years, which could be answered approximately.

Thanking you,

Sd/-
(Dr.(Mrs.) D.K. Agarwal)"

The Ethics Committee further noted that Dr. P.C. Khanduja, which also Medical Officer of the school was asked to appear before the Ethics Committee on 16.10.2007 and he has appeared. He has given a statement before the Ethics Committee which is as follows:-

"16.10.2007

Statement of Dr. P.C. Khanduja

I, Dr. P.C. Khanduja did my MBBS from Jabalpur in the year 1962. I did my DCH from the Maulana Azad Medical College, Delhi in the year 1965 and did my M.D. in the year 1968 from the same institute. I am registered with the Delhi Medical Council, bearing Registration No.13188. My Date of Birth is 30.09.1937.

I am submitting a written to the Hon'ble Ethics Committee today i.e. 16.10.2007

Thanking you,

Sd/-
(Dr. P.C. Khanduja)

The Ethics Committee further noted that Dr. (Mrs.) Mamta Raj was asked to appear before the Ethics Committee on 16.10.2007 and she has appeared. She has given a statement before the Ethics Committee which is as follows:-

"16.10.2007

Statement of Dr. (Mrs.) Mamta Raj

I, Dr.(Mrs.) Mamta Raj, did my MBBS from Gajra Raja Medical College, Gwalior in the year 1993 My registration No. is 12655 from Madhya Pradesh Medical Council. My Date of Birth is 20.12.1965.

Regarding this case I was invited by Dr. K.N. Agarwal to participate in this voluntary medical health check up on the second day in Sardar Patel School, Delhi. As I was not working after I came back from U.K. in April, 2006. When I went to the school with the medical team, the room had all necessary equipment for measuring height and weight and there was a list of the children (class wise) given by the school. There was a staff nurse who was there all the time. Girls were being examined by the lady doctors (Dr. (Mrs.) D.K. Agarwal and myself), I was mostly involved in writing the examination and the boys were examined by the male doctors (Dr. K.N. Agarwal & Dr. P.C.Khanduja). The boys were briefed by Dr. K.N. Agarwal and the girls were briefed Dr.(Mrs.) D.K. Agarwal prior to the medical check up in the auditorium. During the examination the girls were not hesitant and were willingly coming for the examination, they were being asked about the refractive errors and any other medical problems if they had. The medical examination was being done for each girl separately in a cubicle. The girls were not undressed and we did not touch any part of their body, simple auscultation for Cardiac and respiratory system was done.

Sd/- (Dr. (Mrs.) Mamta Raj)"

The Ethics Committee further noted that Mrs. Vinay Goyal, Social Worker. was asked to appear before the Ethics Committee on 16.10.2007 and she has appeared. She has given a statement before the Ethics Committee which is as follows:-

"16.10.2007

Statement of Mrs.Vinay Goyal

I am Mrs. Vinay Goyal. I am a house wife. My husband is a business man. I just work voluntarily in my spare time in our community centre. I was involved in this matter just help to the examination team as an assistant at Sardar Patel School. Dr. K.N. Aggarwal known to me for the last 6 years.

Sd/-
(Mrs. Vinay Goyal)"

The Ethics Committee also noted that Dr. Manish Srivastav was asked to appear before the Ethics Committee on 16.10.2007, but he did fail to do so.

The Ethics Committee after discussing this case and decided to call Dr. Manish Srivastava to be present at 11.00 a.m. on its next meeting. The final decision in this case shall be taken on that day."

As per above decision, Dr. K. N. Aggarwal has been requested to intimate Dr. Manish Srivastav to be present before the Ethics Committee on 18.12.2007 at 11:00 a.m and also requested to send the address of Dr. Srivastava vide Council's letter dated 5.12.2007.

The matter was considered by the Ethics Committee at its meeting held on 17th December, 2007 and the decision was as under:-

"The Ethics Committee considered matter with regard to complaint against Dr. K.N.Aggarwal as alleged by Ms. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights, Govt. of India regarding misconduct during medical examination of students in Sardar Patel School in Delhi and decided this case should be taken for final hearing in its next meeting. The Ethics Committee further noted that Dr. Manish Srivastav who was called on 18.12.2007 should be called on the first day of its next meeting."

The Ethics Committee noted that Dr. Manish Srivastav was asked to appear before the Ethics Committee on 21.01.2008 at 3.00 p.m. and he appeared. He has given a statement which is as under:-

Statement of Manish Srivastav

I, Manish Srivastav passed my MD(Physician) course from Irkutsk State Medical University, Russia in the year 2005. I am not yet registered with the Medical Council of India. A Medical check-up was held in Sardar Patel School, New Delhi and I was asked by Dr. K.N. Agarwal to help in conduction in the check up procedure. I have checked only height & weight of the school children. I have nothing more to add.

Sd/-
(Manish Srivastav)

The Ethics Committee discussed the matter of complaint against Dr. K.N. Agarwala. It has called before it to Dr. K.N. Agarwala, (Dr.(Mrs.) D.K. Agarwal, Dr. P.C. Khanduja, Dr. (Mrs.) Mamta Raj, Dr. Manish Srivastava alongwith Principal, Mrs. Vijaya Subramaniam and Mrs. Vinay Goyal and recorded their statements. The Committee examined their statements. And after talking all available documents and dispositions into account, the Ethics Committee observed that Dr. K.N. Agarwal, who was leader of the doctors team who conducted medical examination of the students of Sardar Patel School, Delhi has failed (1) to evolve a proper aim and objectives of the medical examination that was carried out. From the dispositions, it is clear that he has not been able to design the medical examination protocol as to whether it would be a routine medical examination or a medical examination designed to detect growth/development failure in which case examination of external genitalia in case of boys and breast size in case of girls students may be required. (2) to prepare a proper examination protocol for the medical examination containing the whole examination aim. The only paper used as a protocol is a plan sheet containing the name of student. (3) to inform the school authorities that such an medical checkup

may involve examination of external genitalia in case of boys and breast size in case of girls in cases of suspected growth/development failure (4) to inform the guardians of the students through school authorities prior to the medical examination and obtain their consent.

The Ethics Committee feels that this lapse in communication on the part of Dr. K.N. Agarwal and his team has led to this untoward happening.

After discussing all the aspects of the case, the Ethics Committee is of the considered opinion that Dr. K.N. Agarwala who is the leader of the team, conducting medical examination of the students of Sardar Patel School, New Delhi, has failed to design, inform and conduct the medical examination in a proper and professional manner.

The Ethics Committee has therefore decided, unanimously to issue a warning to Dr. K.N. Agarwal not to do such medical examination in future without proper design and protocol.

The fact may be recorded against his name in the IMR. “

31. Complaint against Dr. Libe Nyork, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Aggarwal (Goyal)

Read: The matter with regard to Complaint against Dr. Libe Nyork, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Aggarwal (Goyal) alongwith the recommendation of Ethics Committee

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council approved the following recommendation of the Ethics Committee:-

“”The matter was considered by the Ethics Committee at its meeting held on 13.10.2006 and the decision was as under :-

“The Ethics Committee considered the matter with regard to complaint against Dr. Libe Nyork, Medical Officer Primary Health Centre, Dist. Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Goyal (Agarwal) and noted that Dr. Libe Nyork is registered with the Uttar Pradesh Medical Council bearing Regn. No.45085, dated 08.11.2001. The Ethics Committee decided to refer this matter to Uttar Pradesh Medical Council for taking necessary action at their end within six months of receipt of this communication under intimation to this Council. A copy of the same may be marked to the complainant. This may be recorded in the referral register.”

As per above decision, the matter was referred to the Registrar, U.P. Medical Council with a copy to the complainant vide Council's letter dated 3.11.2006 to investigate and take necessary action within a period of six months. No reply has been received in this regard.

It may further be stated that the Council received another letter dated 20.04.2007 from Mr. Sajjan Kumar Aggarwal (Goyal) in which he sought some clarification under RTI Act, 2005, which is reproduced below: -

“This is in reference to your letter No. MCI-211(433)/2006 Ethics/18826 dated 3.11.2006 that in which you had informed me about my complaint against Dr. Libe Nyork, Medical Officer, Primary Health Centre, Distt. Changlong, Arunachal Pradesh that decision on my complaint against delinquent physician shall be taken within a time taken of 6 months.

My pointwise query is that what action has been taken and what is status of the proceedings after 13.10.2006 upon my complaint against erring doctor Dr. Libe Nyork, Medical Officer, Primary Health Centre, Distt. Changlong, Arunachal Pradesh.

I submit that to the best of my knowledge the information sought does not fall within the restrictions contained in section 8 and Section9 of the Act and it pertains to your office.

This is certify that I, Sajjan Kumar Goyal S/o Late Mani Ram Soyam am Citizen of India. A fee of Rs. 10/- has been deposited vide IPO No. 59E061616.”

The Council vide its letter dated 6.06.2007 was informed to Mr. Sajjan Kr. Aggarwal that the above matter will be placed before the ensuing meeting of the Ethics Committee and the decision so arrived will be communicated to him in due course of time.

The matter was considered by the Ethics Committee at its meeting held on 18.06.2007 and the decision was as under :-

“The Ethics Committee considered the matter with regard to complaint against Dr. Libe Nyork, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Aggarwal

(Goyal) and noted that Dr. Libe Nyork is registered with the Uttar Pradesh Medical Council and the matter was referred to the Uttar Pradesh Medical Council on 03.11.2006, but till date no information has been heard from the Uttar Pradesh Medical Council as 6 months has already been passed. Therefore, the Ethics Committee decided to take up this case and asked Dr. Libe Nyork, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh to appear before the Ethics Committee at its second next meeting of the Ethics Committee.

The Ethics Committee further decided that the Secretary (Health), Govt. of Arunachal Pradesh and the Director General of Health Services, Govt. of Arunachal Pradesh may also be sent this information with the request to ask the concerned doctor to appear before the Ethics Committee on the appointed day and time.

Mr. Sajjan Kr. Aggarwal(Goyal), who has lodged this complaint and also have sought about the action taken through the RTI Act, 2005 may also be informed regarding this action."

As per above decision, Dr. Libe Nyork was requested to appear before the Ethics Committee on 11.08.2007 at 11.00.a.m vide Council's letter dated 24.07.2007 with a copy to the Secretary, Govt. of Arunachal Pradesh, Health & Medical Dept., Itanagar, the Director, Health Services, Arunachal Pradesh & Mr. Sajjan Kumar Aggarwal, New Delhi.

The matter was considered by the Ethics Committee at its meeting held on 10th & 11th August, 2007 and the decision was as under :-

*"The Ethics Committee considered the matter with regard to complaint against Dr. Libe Nyorak, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Aggarwal and noted that Dr. Libe Nyorak has been asked to appear before the Ethics Committee on 11.8.2007 and he has appeared before the Ethics Committee and his disposition recorded as under:-
11.08.2007*

Statement of Dr. Libe Nyorak

"I, Dr. Libe Nyorak, I am Medical Officer at Primary Health Centre, Diyun, Changalang Dist. Arunachal Pradesh. I did my MBBS from M.L.B. Medical College, Jhansi in the year 2000. I am registered with the Uttar Pradesh Medical Council, bearing Registration No.45085 and I am also registered with the Delhi Medical Council, bearing Regn. No.18598 of 2003. My Date of Birth is 14.01.1976.

Regarding the complaint against me I have the following to state.

The patient Smt. Roitong Singpho, (Adult/Female), visited my OPD frequently with complaint of bleeding per vaginal and low back pain. One day she came for medical certificate regarding rest stating that her symptoms aggravated whenever she under goes journey and attending social activities. She brought me treatment report of vaginal bleeding and Polypectomy done in Sir Ganga Ram Hospital, Delhi one year back. Since, there is no Gynae. & Obst. in the entire Changalang Dist. and nearest facilities are available in Assam only. So I gave her rest for 11 month and advise her to continue treatment. I was not aware of any Court case against her. I advised for patient well being only and in good faith".

Sd/-

(Dr. Libe Nyorak)

The Ethics Committee also noted that the advocate of the complainant also came today without being called by this office and he has marked his attendance and address. The Ethics Committee decided to call the complainant to appear before the Ethics Committee on the appointed day and time in person/through his advocate on the second day of its next meeting of the Ethics Committee at 11.30 a.m."

As per above decision, Mr. Sajjan Kumar Aggarwal was requested to appear before the Ethics Committee on 16.10.2007 at 11.30.a.m vide Council's letter dated 8.10.2007.

The matter was considered by the Ethics Committee at its meeting held on 15th & 16th October, 2007 and the decision was as under :-

"Mr. Sajjan Kumar Aggarwal was called before the Ethics Committee on 16.10.2007. He was represented by his legally constituted lawyer Mr. Bishwajit Kumar Shahi today and he has made a oral submission before the Ethics Committee. The Ethics Committee after hearing his submission decided that Mr. Shahi shall file a written submission to it within 15 days, the case may be listed for next meeting. The advocate shall be informed on the date."

Further, Mr. Shahi has sent a letter dated 30.10.2007 in which it is stated as under :-

"1. That in pursuant to the order passed by this Hon'ble Committee on 16.10.2007 to file the written argument the complainant is making his submission as under :

2. That the complainant has filed two cases against Riontong Singhpho, the wife of Cabinet Minister C.C. Shingpho before the Judicial Magistrate U/s 138 of Negotiable Instrument Act.

3. That the above said two cases were filed by the complainant against Roiting singpho the patient/ accused under section 138 of Negotiable Instrument Act which is criminal in nature and the accused has to appear in person the Hon'ble Court and also to seek bail from the court.

4. That said two cases involves amount of Rs. 38.5 Lacs and when the accused Riotong Singpho could not get relief from the District Court, High Court, thereafter, she approached the erring doctor to issue such a certificate for a long period.

5. That my humble submission in that whether a doctor should come on the way of delivery of Justice providing such a fake certificate on false disease only on help the accused person coming under influence of colorful power of the cabinet minister, C.C. Singpho.

In view of submission made hereinabove it is humbly prayed your Goodself that an appropriate and stringent action be taken against erring doctor, so that complainant may get relief from the Hon'ble Court.

Pass further any other order which this Hon'ble may deem fit and proper in the interest of justice."

The matter was considered by the Ethics Committee at its meeting held on 12th & 13th Feburary, 2008 and the decision was as under :-

"The Ethics Committee noted that the Council received a letter dated 28.08.2006 from Mr.Sajjan Kumar Aggarwal (Goyal) with regard to complaint against Dr. Libe Nyork, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh.

On perusal of the IMR data, it was noted that Dr. Libe Nyork is registered with U. P. Medical Council bearing Regn. No. 45085 dated 8.11.2001.

The matter was considered by the Ethics Committee at its meeting held on 13.10.2006 and the decision was as under :-

"The Ethics Committee considered the matter with regard to complaint against Dr. Libe Nyork, Medical Officer Primary Health Centre, Dist. Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Goyal (Agarwal) and noted that Dr. Libe Nyork is registered with the Uttar Pradesh Medical Council bearing Regn. No.45085, dated 08.11.2001. The Ethics Committee decided to refer this matter to Uttar Pradesh Medical Council for taking necessary action at their end within six months of receipt of this communication under intimation to this Council. A copy of the same may be marked to the complainant. This may be recorded in the referral register."

As per above decision, the matter was referred to the Registrar, U.P. Medical Council with a copy to the complainant vide Council's letter dated 3.11.2006 to investigate and take necessary action within a period of six months. No reply has been received in this regard.

It may further be stated that the Council received another letter dated 20.04.2007 from Mr. Sajjan Kumar Aggarwal (Goyal) in which he sought some clarification under RTI Act, 2005, which is reproduced below: -

"This is in reference to your letter No. MCI-211(433)/2006 Ethics/18826 dated 3.11.2006 that in which you had informed me about my complaint against Dr. Libe Nyork, Medical Officer, Primary Health Centre, Distt. Changlong, Arunachal Pradesh that decision on my complaint against delinquent physician shall be taken within a time taken of 6 months.

My pointwise query is that what action has been taken and what is status of the proceedings after 13.10.2006 upon my complaint against erring doctor Dr. Libe Nyork, Medical Officer, Primary Health Centre, Distt. Changlong, Arunachal Pradesh.

I submit that to the best of my knowledge the information sought does not fall within the restrictions contained in section 8 and Section9 of the Act and it pertains to your office.

This is certify that I, Sajjan Kumar Goyal S/o Late Mani Ram Soyol am Citizen of India. A fee of Rs. 10/- has been deposited vide IPO No. 59E061616."

The Council vide its letter dated 6.06.2007 was informed to Mr. Sajjan Kr. Aggarwal that the above matter will be placed before the ensuing meeting of the Ethics Committee and the decision so arrived will be communicated to him in due course of time.

The matter was considered by the Ethics Committee at its meeting held on 18.06.2007 and the decision was as under :-

"The Ethics Committee considered the matter with regard to complaint against Dr. Libe Nyork, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Aggarwal (Goyal) and noted that Dr. Libe Nyork is registered with the Uttar Pradesh Medical Council and the matter was referred to the Uttar Pradesh Medical Council on 03.11.2006, but till date no information has been heard from the Uttar Pradesh Medical Council as 6 months has already been passed. Therefore,

the Ethics Committee decided to take up this case and asked Dr. Libe Nyork, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh to appear before the Ethics Committee at its second next meeting of the Ethics Committee.

The Ethics Committee further decided that the Secretary (Health), Govt. of Arunachal Pradesh and the Director General of Health Services, Govt. of Arunachal Pradesh may also be sent this information with the request to ask the concerned doctor to appear before the Ethics Committee on the appointed day and time.

Mr. Sajjan Kr. Aggarwal(Goyal), who has lodged this complaint and also have sought about the action taken through the RTI Act, 2005 may also be informed regarding this action.”

As per above decision, Dr. Libe Nyork was requested to appear before the Ethics Committee on 11.08.2007 at 11.00.a.m vide Council's letter dated 24.07.2007 with a copy to the Secretary, Govt. of Arunachal Pradesh, Health & Medical Dept., Itanagar, the Director, Health Services, Arunachal Pradesh & Mr. Sajjan Kumar Aggarwal, New Delhi.

The matter was considered by the Ethics Committee at its meeting held on 10th & 11th August, 2007 and the decision was as under :-

*“The Ethics Committee considered the matter with regard to complaint against Dr. Libe Nyorak, Medical Officer, Primary Health Centre, Changlang, Arunachal Pradesh as alleged by Mr. Sajjan Kr. Aggarwal and noted that Dr. Libe Nyorak has been asked to appear before the Ethics Committee on 11.8.2007 and he has appeared before the Ethics Committee and his disposition recorded as under:-
11.08.2007*

Statement of Dr. Libe Nyorak

“I, Dr. Libe Nyorak, I am Medical Officer at Primary Health Centre, Diyun, Changalang Dist. Arunachal Pradesh. I did my MBBS from M.L.B. Medical College, Jhansi in the year 2000. I am registered with the Uttar Pradesh Medical Council, bearing Registration No.45085 and I am also registered with the Delhi Medical Council, bearing Regn. No.18598 of 2003. My Date of Birth is 14.01.1976.

Regarding the complaint against me I have the following to state.

The patient Smt. Roitong Singpho, (Adult/Female), visited my OPD frequently with complaint of bleeding per vaginal and low back pain. One day she came for medical certificate regarding rest stating that her symptoms aggravated whenever she under goes journey and attending social activities. She brought me treatment report of vaginal bleeding and Polypectomy done in Sir Ganga Ram Hospital, Delhi one year back. Since, there is no Gynae. & Obst. in the entire Changalang Dist. and nearest facilities are available in Assam only. So I gave her rest for 11 month and advise her to continue treatment. I was not aware of any Court case against her. I advised for patient well being only and in good faith”.

Sd/-

(Dr. Libe Nyorak)

The Ethics Committee also noted that the advocate of the complainant also came today without being called by this office and he has marked his attendance and address. The Ethics Committee decided to call the complainant to appear before the Ethics Committee on the appointed day and time in person/through his advocate on the second day of its next meeting of the Ethics Committee at 11.30 a.m.”

As per above decision, Mr. Sajjan Kumar Aggarwal was requested to appear before the Ethics Committee on 16.10.2007 at 11.30.a.m vide Council's letter dated 8.10.2007.

The matter was considered by the Ethics Committee at its meeting held on 15th & 16th October, 2007 and the decision was as under :-

“Mr. Sajjan Kumar Aggarwal was called before the Ethics Committee on 16.10.2007. He was represented by his legally constituted lawyer Mr. Bishwajit Kumar Shahi today and he has made a oral submission before the Ethics Committee. The Ethics Committee after hearing his submission decided that Mr. Shahi shall file a written submission to it within 15 days, the case may be listed for next meeting. The advocate shall be informed on the date.”

Further, Mr. Shahi has sent a letter dated 30.10.2007 in which it is stated as under :-

“1. That in pursuant to the order passed by this Hon'ble Committee on 16.10.2007 to file the written argument the complainant is making his submission as under :

2. That the complainant has filed two cases against Riontong Singhpho, the wife of Cabinat Minister C.C. Shingpho before the Judicial Magistrate U/s 138 of Negotiable Instrument Act.

3. That the above said two cases were filed by the complainant against Roiting singpho the patient/ accused under section 138 of Negotiable Instrument Act which is criminal in nature and the accused has to appear in person the Hon'ble Court and also to seek bail from the court.

4. That said two cases involves amount of Rs. 38.5 Lacs and when the accused Riotong Singpho could not get relief from the District Court, High Court, thereafter, she approached the erring doctor to issue such a certificate for a long period.

5. That my humble submission in that whether a doctor should come on the way of delivery of Justice providing such a fake certificate on false disease only on help the accused person coming under influence of colorful power of the cabinet minister, C.C. Singpho.

In view of submission made hereinabove it is humbly prayed your Goodself that an appropriate and stringent action be taken against erring doctor, so that complainant may get relief from the Hon'ble Court.

Pass further any other order which this Hon'ble may deem fit and proper in the interest of justice."

The Ethics Committee after due deliberation have seen that Dr. Libe Nyork has given a certificate to one particular patient Smt. Roitong Singpho, advising her rest for 11 months due to vaginal bleeding and Polypectomy as per the report of Sir Ganga Ram Hospital, Delhi and low back pain. The Ethics Committee has called Dr. Libe Nyork and has also recorded his statement. The Ethics Committee is of the opinion that issuance of certificate for a period of 11 months is improper, irregular and not according to the laid-down procedure followed in Government establishment. Moreover, it has further observed that a Medical Officer is not authorized to issue such certificate for such a period without referring the patient to his senior and to a specialist doctor. Dr. Libe Nyork has not referred the patient to any senior doctor or specialist for the above complaint.

The Ethics Committee therefore, is of the opinion that Dr. Libe Nyork has committed mis-conduct by issuing such certificate to the patient. The Ethics Committee therefore recommends that a warning may be issued to Dr. Libe Nyork to follow appropriate rules and procedure at the time of issuing such certificates in future. This may be recorded against his name in the IMR.."

32. Reformative and remedial programmes for medical practitioners convicted of professional misconduct by Medical Council .

Read: The matter with regard to reformative and remedial programmes for medical practitioners convicted of professional misconduct by Medical Council alongwith the recommendation of the Ethics Committee.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to approve the following report of the Sub-Committee as constituted by the Executive Committee at its meeting held on 29th December, 2007:-

"Report of the meeting of the Sub-Committee constituted by the Executive Committee for the purposes of Reformative and remedial programmes for medical practitioners convicted of professional misconduct by Medical Council.

The meeting of the Sub-Committee was held on 30th January, 2008 at 12.00 noon in the Council office at Sector-8, Pocket-14, Dwarka, New Delhi-110077.

.....

The present Sub-Committee came to be constituted by the Executive Committee of the Council at its meeting held on 29th December, 2007 for the purposes of suggesting modalities in respect of reformative and remedial programmes for medical practitioners convicted of professional misconduct by Medical Council of India.

The meeting of the Committee was held on 30th January, 2008 at 12.00 noon in the office of the Council wherein Dr.D.J. Borah, Chairman, Ethics Committee & Dr.Ved Prakash Mishra, Member, Executive Committee be present.

The Committee noted that the Ethics Committee of the Council is vested with the authority and jurisdiction in regard to trying and deciding the cases pertaining to breach of Ethical Code of conducts depending upon the nature of the wrongdoing by the concerned medical practitioners and upon entries to the prescribed procedure wherein penalties are imposed on the delinquent which include censure, warning, deletion of name for quantum of time and permanent removal from the Indian Medical Register depending upon the nature and gravity of the wrongs. The issue arose wherein a communication from the Singapore Medical Council was placed before the Ethics Committee of the Council wherein it was brought out that Singapore Medical Council was exploring mandatory remedial measure, strategies and programmes for doctors who have found guilty of professional misconduct or unethical practice by the Council's Disciplinary Committee but whose names have not been permanently removed from the Register.

It further states that it has been long suspected that punitive measures may not be adequate in effecting the desired change in these practitioners who will resume practice after their suspension, fines or censure. Singapore Medical Council therefore hopes that through such remedial measures there can be constructive changes in the professional attitude and conduct of such practitioners thereby helping them to avoid repeat offences.

As this is an entirely new idea to Singapore Medical Council where a communication further brings up that as such entire ideas were new they are keen to learn from the experience of other Medical Councils and sought information from the MCI as to whether such a practice exists in our Council and in case MCI has such a practice what are remedial measures strategies and programmes that have been kept in place to facilitate the reformation of these practitioners.

The Ethics Committee having considered the said letter at its meeting held on 15/16 October, 2007, observed that as of now the MCI did not have any such strategy or programme in place. However, the Committee desired that one of the Hon'ble Member Dr.P.M. Jadhav of the Ethics Committee be entrusted with the responsibilities for preparing a required draft for further consideration by the Committee. In accordance with the decision of the Ethics Committee Dr.P.M. Jadhav prepared extensive note wherein apart from providing answers to the various questions put in by the Singapore Medical Council in their communication also put forward relevant and meaningful suggestions which included as under:-

Draft on reformative and remedial programme for the medical practitioners convicted of professional misconduct by medical council.

This is with reference to the letter from the Singapore Medical Council dated 03 May, 2007. The Singapore Medical Council consultant has requested the MCI to reply to the queries raised by them. The queries and our suggested replies are as under.

1)	<i>Whether such a framework Already exists in your Council</i>	<i>No (as per the information gathered from MCI officials)</i>
2)	<i>If you do have such a practice, what are some of the remedial measures, strategies and programmes that you have in place to facilitate the reformation of these practitioners.</i>	<i>Till today no such strategies or programmes prepared by this Medical Council (as per the information gathered from MCI officials)</i>

Following are few of the suggestions form reformative and remedial programmes for medical practitioners convicted of professional misconduct by MCI.

- 1. The Council in view of reformative and remedial measures should post the concerned practitioners for a certain length of period, such as 3 to 6 months, in the concerned speciality to which the practitioner belong, in a university department or medical college. The place chosen should be in different region than to which the practitioner belong, (so that his anonymity can be maintained to a certain extent and he will be unable to influence the institution members in any way). The practitioner shall work in the department of the concerned specialty. The conceptual basis for this posting is the practitioner in such environment will imbibe ethical behavioral patterns and the knowledge and skills of the institution which will modify his conduct suitably. The practitioner will be charged fees for this posting which will compensate for the training in this period and he will not be paid any remuneration for the services rendered by him.*
- 2. Conducting periodical workshops/ seminars.*

The Medical Council should conduct periodical workshops and seminars on “Ethical Conduct and Behavior by medical professionals.” These workshops/ seminars should be conducted by the authorities in related subjects and medical professionals including defaulters are invited for active participation. This would not only create awareness on medical ethics but act as a deterrent for would be defaulters and help to improve the conduct of those who have indulged in malpractice in the past. Depending upon the vastness of country these workshops/ seminars are either held centrally or by Regional Medical Councils.
- 3. During the under graduate and post graduate medical curriculum due stress needs to be paid on topics like “ Doctor Patient Relationship”, “Hippocratic Oath”, “Medical and health aspects of Consumer Protection Act”, “Professional Misconduct and the powers of Medical Council” etc. The stress can be given during internship training program: in form of case study, written examination, or participatory discussion session; wherein the candidate will be evaluated by the Institutional Ethics Committee. The internship completion will be granted on this basis.*
- 4. Establishment of Vigilance Committee.*

A vigilance committee (Cell) should be formed by the MCI comprising of eminent medical professional who should formulate an Action Plan for vigilance on practitioners at large and defaulters in particular to keep watch on malpractices by direct and / or indirect methods. The review and reporting to high authorities should be done in strict confidentiality. The defaulters should be intimated accordingly in view of future screening and disciplinary action.

5. *Indirect participation and creation of awareness of public and medical students.*

Citizens who are normally beneficiaries of all services by medical profession are expected to be fully aware as regards their rights related to availment of services and also victimization of occasional malpractice and misconduct by medics.

The awareness can be achieved through press, public meetings, school and colleges and available vast media. Waiting halls in public hospitals and dispensaries should have displays as regards such awareness and education.

Medical Ethics should be taught as a separate subject in medical colleges.

6. *Periodicity of Re-registration of Medical Professionals.*

Normally re-registration by Central and / or Regional Medical Councils are carried out periodically to update the Register by inviting written information from practitioners. However as regards defaulters to keep watch and vigilance, the periodicity of re-registration should be short, so that the defaulters are kept under scrutiny and they themselves are aware of such constant watch on them by the Council which may act as a deterrent and punitive action in future.

7. *Under the act of right to information' maintaining the anonymity of the practitioner wide but factual, matter of factly, publicity through mass media be given as to what was the misconduct, how it occurred, through mass media be given as to what was the misconduct, how it occurred, how was it detected, what were the punitive measures given, what are the reformative measures and how lay people can identify and prevent professional misconduct. If the client knows this the chances are pretty good that the professional will not indulge in misconduct.*

Sd/-

*(Dr. P.M. Jadhav)
Member, Ethical Committee.*

The note so readied by Dr. P.M. Jadhav was considered by the Ethics Committee and it was decided that the same may be placed before the Executive Committee for an appropriate decision. It is on the consideration of this note that the Executive Committee had decided to constitute the present Committee.

The Committee apart from its agreement with the note prepared by Dr.P.M. Jadhav and approved by the Ethics Committee would further like to suggest as under:-

In order to keep the remedial practices in place the concept of rehabilitation-mental, emotional and professional of the delinquent is required to be taken stock of and as the disciplinary measures evoked by the Council not only just bars and professional from practicing but it also puts a scar and stigma as well on the delinquent . We are not denying the fact that the disciplinary jurisdiction is required to be evoked but at the same time it has to generate an exemplary proposition which is deterrent in character so that wrongs are not done. It is for this reason as a part of the rehabilitation package counseling of the delinquent is necessary. In this context, Committee would like to draw the attention wherein the National Accreditation Policy, MCI in their documents for accreditation medical institutions have proposed for every medical institutions a student guidance unit for the purposes of counseling the needy students be constituted. The context of such students guidance unit as incorporated by the Council goes to state that such recommendations are expected to be helping not only identified slow learners but also is in a position to formulate some decisive relevant package for fast learners. This has been construed as an exercise of relevance that the good health practices are adopted. By a similar yard-stick, Rehabilitative, Reformative and Counseling centres need to be created for the purposes of orientation counseling and rehabilitation of delinquent in the context of imposition of penalties by the MCI in terms of their disciplinary jurisdiction. To begin with it would be advisable to have atleast one such centre in each State preferably allocable to the leading medical colleges in the concerned State. The Committee also feels it appropriate to formulate necessary guidelines of the Council which could be passed on to the respective Unitary Counseling/rehabilitation centres as may be created.

The nature of measures which are required to be undertaken are to be in terms of :-

1. *Rehabilitation measures*
2. *Preventive measures which would include generation of appropriate awareness on the necessary areas which already stand catalogued in the note prepared by Dr.P.M. Jadhav.*

The Committee recommends that the following guidelines for remedial/reformative action.

Guidelines for remedial action

1. *A delinquent doctor shall be posted for remedial and rehabilitative measures into a designated institute. He/she shall report to the Dean.*
2. *The Dean shall devise a training programme for him/her in the concerned speciality/areas where it is required for the period specified.*
3. *The Dean shall consider the directions of MCI and devise the training programme which would be fulltime in consultation with the HOD/HODs of the concerned department/departments so that the doctor concerned is helped in acquiring the necessary competence.*
4. *After completion of the programme a report on the training shall be given by the Dean to the doctor as shall be sent to MCI.*
5. *The training should include awareness regarding the Code of Medical Ethics, doctor patient relationship and communicative and behavioural skills.*
6. *Psychological rehabilitation may be worked out through clinical psychologist in an appropriate manner that may be deemed necessary.*

The Ethics Committee, whenever it recommends a penal action on a doctor under provisions of regulation, may also recommend reformative and remedial action at the same time under provisions of the above guidelines.”

33. Appeal against Order of Delhi Medical Council dated 31.12.2006 made by Mr. M.K. Kammod.

Read: The matter with regard to Appeal against Order of Delhi Medical Council dated 31.12.2006 made by Mr. M.K. Kammod alongwith the recommendation of Ethics Committee.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council approved the following recommendation of the Ethics Committee:-

“The matter was considered by the Ethics Committee at its meeting held on 19.03.2007 and the decision was as under:-

“The Ethics Committee considered the appeal against order of Delhi Medical Council dated 30.12.06 made by Mr. M.K. Kammod and accept this case as an appeal case and decided that Mr. M.K. Kammod complainant may be asked to appear before the Ethics Committee in its second next meeting at 11.00 a.m.”

As per above decision, Mr. M.K. Kammod had requested to appear before the Ethics Committee on 15th May, 2007 at 11.00a.m vide Council's letter dated 26.04.2007.

The matter was considered by the Ethics Committee at its meeting held on 14th & 15th May, 2007 and the decision was as under:-

“The Ethics Committee considered the matter with regard to appeal against orders of Delhi Medical Council dated 30.12.2006 made by Mr. M.K. Kammod and noted that Mr. M.K. Kammod, complainant has been asked to appear before the Ethics Committee on 15.05.2007 at 11.a.m. Mr. M.K. Kammod appeared before the Ethics Committee himself. He has submitted his oral deposition before the Ethics Committee and he has said that he has already submitted all in details in his original complaint dated 30.12.2006 and now nothing he want to say.

The Ethics Committee has gone through the oral deposition of Mr. M.K. Kammod alongwith the case file and decided that Dr. Praveen Garg to be present before the Ethics Committee in its next meeting at 12.30 p.m.”

As per above decision, Dr. Praveen Garg had requested to appear before the Ethics Committee on 18.06.2007 at 12.30 p.m vide Council's letter dated 9.06.2007.

The matter was considered by the Ethics Committee at its meeting held on 18.06. 2007 and the decision was as under:-

“The Ethics Committee considered the matter with regard to appeal against Order of Delhi Medical Council dated 30.12.2006 made by Mr. M.K. Kamood and noted that Dr. Praveen Garg has appeared before the Ethics Committee and his statement is as under:-

Statement of Dr. Praveen Garg

I, Dr. Praveen Garg did my MBBS from Medical College, Rohtak in the year 1982 and MS (General Surgery) from the same institute in the year 1987. My registration number bearing DMC 2148. My date of birth is 31.12.1959.

Regarding this case and a complaint against me by the complainant Mr. M.K. Kamood, I would like to make the following statement:-

I had examined the patient Mrs. Madhu Kamood in the OPD of Jain Charitable Hospital and found her to be suffering from a breast lump. On examination, I found a small lymph node in the left axilla. I advised her FNAC test and the report suggested to be a Benign Proliferative Breast Lesion. After doing required investigations, I advised her Excision of the breast lump. The breast lesion was excised and specimen was sent for histopathological examination. A mini suction drain was placed in the wound and it was removed after 48 hours. The histopathology report suggested it to be Fibrocystic Disease of the Breast with Focal Atypical Hyperplasia. As the patient had a lymph node in left axilla and the histopathology report showed Focal Atypical Hyperplasia, for the benefit of the patient so as not to miss any evidence of malignancy, I advised her a second opinion. The slides were handed over to the attendants and the second opinion was taken from a Senior Pathologist of the area Dr. T.K. Mathur. The report of Dr. T.K. Mathur suggested it to be Fibrocystic Disease of the Breast with FOCI of Duct Carcinoma in SITU. The patient was advised that no further treatment is necessary but looking at the word, Duct Carcinoma in SITU, the patient got worried and tense. Her husband came to me and said that the patient is very tensed so what should we do. I advised to take the opinion of the cancer specialist. I gave them three options – A.I.I.M.S. , Dharamshila Cancer Hospital or Rajiv Gandhi Cancer Hospital. He said that I will get full reimbursement as I am in the Bank. You please refer to me private center and then he was advised to go to the Rajiv Gandhi Cancer Hospital. In between, the patient was having a wound infection and dressing were done for the same. After the opinion of Dr. T.K. Mathur, the patient never came back to me. Then I got summon from Consumer Forum in which the patient had complained that because of the opinion of Dr. T.K. Mathur, the patient had undergone a lot of mental harassment for which he had put up a compensation case in the Consumer Forum. Nowhere it was mentioned about a foreign body in the complaint in Consumer Forum. The case was decided in our favour in the very first hearing. Then a fresh rejoinder was added about a foreign body in the wound by the complainant. My point of view is that whether a diagnosis Focal Atypical Hyperplasia or Duct Carcinoma in SITU, the treatment of excision of lump had already been done. When the patient was so tensed about the diagnosis of suspected malignancy, they should have gone to a hospital with cancer department and cancer specialist but instead they had gone to a hospital in the vicinity of the working place of her husband with a malafide intention of making out a legal case. As the first complaint by the patient did not have any solid ground either against me or hospital or Dr. T.K. Mathur. A fresh complaint in the form of foreign body was added. The foreign body could only have been a piece of drain which is also a very very rare because the tube drain which we use is hanging out of the wound and when we pull it out, it does not break leaving a piece inside the wound. Such a thing is unheard of. When we were shown a piece of foreign body in the Delhi Medical Council hearing, it was not a piece of the drain. It was a simple plastic tube, a thing never found in the operation theatre and not being used in the O.T. The doctor who allegedly removed this foreign body when asked about the foreign body replied that it was a corrugated drain which he removed. The plastic piece nowhere resembles a corrugated drain. As the patient had disappeared from our follow up and went to N.C. Joshi Hospital, it is very difficult to say whether this plastic tube was implanted in the wound which was open or got accidentally into wound during subsequent dressing done outside. It seems as if the mammography test was also done just to document the foreign body, the films of the mammography show that the foreign body was lying in a superficial plain just beneath the skin which should not have been missed in the dressing. So I appeal to the Forum that after knowing that the first complaint by the patient does not have any solid reason, the complainant added the second complaint intentionally to make the case stronger and I am being harassed unnecessarily since then. The OPD record of N.C. Joshi Hospital suggests that the OPD record has been prepared on the same day putting different dates and showing that the patient has been managed there for few days. As the patient has neither been advised surgery for malignancy nor any surgery has been done for malignancy and patient is absolutely fine even today and the alleged foreign body is not something used in the operation theatre so the case be rejected.

I appeal, a proper investigation should be done if there has been any intention on the part of the patient to intentionally implant a foreign body and unnecessarily harass me.

*Sd/-
(DR. PRAVEEN GARG)
Dated: 18/6/2007*

The final decision in this case will be taken up in its next meeting. “

The matter was considered by the Ethics Committee at its meeting held on 9th & 10th July, 2007 and the decision was as under:-

"The Ethics Committee considered the matter with regard to appeal against order of Delhi Medical Council dated 30.12.2006 made by Mr. M.K.Kamood and decided that Prof. & Head of Surgery, UCMS be requested to assist the Council in this case to take further action in the matter. The complete detail of the case be sent to HOD of Surgery with all other relevant documents requesting him to send his expert opinion within a period of 15 days on receipt of this letter to assist the Council."

As per above decision, the Professor & HOD, Department of Surgery, UCMS, Delhi was requested to kindly assist by providing his expert opinion within 15 days vide Council's letter dated 20.08.2007 and subsequent reminder dated 30.10.2007.

In response to above, Dr. B.K. Jain, Professor & Head, Department of Surgery, UCMS, Delhi has sent a letter dated nil received in this Council on 28.11.2007 in which it is stated as under :-

"Based on document provided to me, my opinion in the matter mentioned above is as follows :

The order of Delhi Medical Council dated 9.12.2006 has been sent enclosed with the MCI letter dated 30.10.2007. No. order of Delhi Medical Council dated 30.12.2006 (as mentioned under 'subject' in your letter) has been sent to me. Mr. M.K. Kamood has also referred to DMC letter dated 9.12.2006 in his letter.

Therefore my opinion, mentioned below, pertains to appeal made by Mr. M.K.Kamood against order of Delhi Medical Council dated 9.12.2006.

"In my opinion there is no merit in the appeal against order of Delhi Medical Council dated 9.12.2006 made by Mr. M.K. Kamood."

The matter was considered by the Ethics Committee at its meeting held on 6th & 7th December, 2007 and the decision was as under:-

"The Ethics Committee has taken note of the letter of Dr. B.K. Jain, Prof. & HOD of Surgery, UCMS regarding opinion in this particular case and noted that Dr. Jain opined that there is no merit in the appeal against order of Delhi Medical Council.

The Ethics Committee, therefore, decided that the final decision in this case will be taken in its second next meeting. "

The matter was considered by the Ethics Scrutiny Sub-Committee at its meeting held on 14.01.2008 and the recommendation of the Committee was as under :-

"The Ethics Scrutiny Committee went through all the documents pertaining to this case and has observed that after thorough investigation regarding the circumstances of this case the Delhi Medical Council has arrived at a reason order dated 09.12.2006 where warning was issued to Dr. Praveen Garg and caution was issued to Dr. S. Chourdary of Dr. N.C. Joshi Memorial Hospital.

After examination of all the aspects of this case the Ethics Scrutiny Committee decided to recommend to the Ethics Committee that the decision of Delhi Medical Council be upheld and the order of warning and caution to Dr. Praveen Garg and Dr. S. Choudhary may also be recorded in the IMR against their name."

The matter was considered by the Ethics Committee at its meeting held on 21st & 22nd January, 2008 and the decision was as under :-

"The Ethics Committee considered the matter with regard to appeal against Order of Delhi Medical Council dated 30.12.2006 made by Mr. M.K. Kamood and noted that the Ethics Scrutiny Committee considered this case at its meeting held on 14.01.2008.

It may be stated that the Council received an appeal against an Order dated 30.12.2006 passed by Delhi Medical Council made by Mr. M.K. Kamood.

The matter was considered by the Ethics Committee at its meeting held on 19.03.2007 and the decision was as under:-

"The Ethics Committee considered the appeal against order of Delhi Medical Council dated 30.12.06 made by Mr. M.K. Kamood and accept this case as an appeal case and decided that Mr. M.K. Kammod complainant may be asked to appear before the Ethics Committee in its second next meeting at 11.00 a.m."

As per above decision, Mr. M.K. Kammod had requested to appear before the Ethics Committee on 15th May, 2007 at 11.00a.m vide Council's letter dated 26.04.2007.

The matter was considered by the Ethics Committee at its meeting held on 14th & 15th May, 2007 and the decision was as under:-

"The Ethics Committee considered the matter with regard to appeal against orders of Delhi Medical Council dated 30.12.2006 made by Mr. M.K. Kammod and noted that Mr. M.K. Kammod, complainant has been asked to appear before the Ethics Committee on 15.05.2007 at 11.a.m. Mr. M.K. Kammod appeared before the Ethics Committee himself. He has submitted his oral deposition before the Ethics Committee and he has said that he has already submitted all in details in his original complaint dated 30.12.2006 and now nothing he want to say.

The Ethics Committee has gone through the oral deposition of Mr. M.K. Kammod alongwith the case file and decided that Dr. Praveen Garg to be present before the Ethics Committee in its next meeting at 12.30 p.m."

As per above decision, Dr. Praveen Garg had requested to appear before the Ethics Committee on 18.06.2007 at 12.30 p.m vide Council's letter dated 9.06.2007.

The matter was considered by the Ethics Committee at its meeting held on 18.06. 2007 and the decision was as under:-

"The Ethics Committee considered the matter with regard to appeal against Order of Delhi Medical Council dated 30.12.2006 made by Mr. M.K. Kamood and noted that Dr. Praveen Garg has appeared before the Ethics Committee and his statement is as under:-

Statement of Dr. Praveen Garg

I, Dr. Praveen Garg did my MBBS from Medical College, Rohtak in the year 1982 and MS (General Surgery) from the same institute in the year 1987. My registration number bearing DMC 2148. My date of birth is 31.12.1959.

Regarding this case and a complaint against me by the complainant Mr. M.K. Kamood, I would like to make the following statement:-

I had examined the patient Mrs. Madhu Kamood in the OPD of Jain Charitable Hospital and found her to be suffering from a breast lump. On examination, I found a small lymph node in the left axilla. I advised her FNAC test and the report suggested to be a Benign Proliferative Breast Lesion. After doing required investigations, I advised her Excision of the breast lump. The breast lesion was excised and specimen was sent for histopathological examination. A mini suction drain was placed in the wound and it was removed after 48 hours. The histopathology report suggested it to be Fibrocystic Disease of the Breast with Focal Atypical Hyperplasia. As the patient had a lymph node in left axilla and the histopathology report showed Focal Atypical Hyperplasia, for the benefit of the patient so as not to miss any evidence of malignancy, I advised her a second opinion. The slides were handed over to the attendants and the second opinion was taken from a Senior Pathologist of the area Dr. T.K. Mathur. The report of Dr. T.K. Mathur suggested it to be Fibrocystic Disease of the Breast with FOCI of Duct Carcinoma in SITU. The patient was advised that no further treatment is necessary but looking at the word, Duct Carcinoma in SITU, the patient got worried and tense. Her husband came to me and said that the patient is very tensed so what should we do. I advised to take the opinion of the cancer specialist. I gave them three options – A.I.I.M.S. , Dharamshila Cancer Hospital or Rajiv Gandhi Cancer Hospital. He said that I will get full reimbursement as I am in the Bank. You please refer to me private center and then he was advised to go to the Rajiv Gandhi Cancer Hospital. In between, the patient was having a wound infection and dressing were done for the same. After the opinion of Dr. T.K. Mathur, the patient never came back to me. Then I got summon from Consumer Forum in which the patient had complained that because of the opinion of Dr. T.K. Mathur, the patient had undergone a lot of mental harassment for which he had put up a compensation case in the Consumer Forum. Nowhere it was mentioned about a foreign body in the complaint in Consumer Forum. The case was decided in our favour in the very first hearing. Then a fresh rejoinder was added about a foreign body in the wound by the complainant. My point of view is that whether a diagnosis Focal Atypical Hyperplasia or Duct Carcinoma in SITU, the treatment of excision of lump had already been done. When the patient was so tensed about the diagnosis of suspected malignancy, they should have gone to a hospital with cancer department and cancer specialist but instead they had gone to a hospital in the vicinity of the working place of her husband with a malafide intention of making out a legal case. As the first complaint by the patient did not have any solid ground either against me or hospital or Dr. T.K. Mathur. A fresh complaint in the form of foreign body was added. The foreign body could only have been a piece of drain which is also a very very rare because the tube drain which we use is hanging out of the wound and when we pull it out, it does not break leaving a piece inside the wound. Such a thing is unheard of. When we were shown a piece of foreign body in the Delhi Medical Council hearing, it was not a piece of the drain. It was a simple plastic tube, a thing never found in the operation theatre and not being used in the O.T. The doctor who allegedly removed this foreign body when asked about the foreign body replied that it was a corrugated drain which he removed. The plastic piece nowhere resembles a corrugated drain. As the patient had disappeared from our follow up and went to N.C. Joshi Hospital, it is very difficult to say whether this plastic tube was implanted in the wound which was open or got accidentally into wound during subsequent dressing done outside. It seems as if the mammography test was also done just to document the foreign body, the films of the mammography show that the foreign body was lying in a superficial plain just beneath the skin which should not have been missed in the dressing. So I appeal to the Forum that after knowing that the first complaint by the patient does not have any solid reason, the complainant added the second complaint intentionally to make the case stronger and I am being harassed unnecessarily since then. The OPD record of N.C. Joshi Hospital suggests that the OPD record has been prepared on the same day putting different

dates and showing that the patient has been managed there for few days. As the patient has neither been advised surgery for malignancy nor any surgery has been done for malignancy and patient is absolutely fine even today and the alleged foreign body is not something used in the operation theatre so the case be rejected.

I appeal, a proper investigation should be done if there has been any intention on the part of the patient to intentionally implant a foreign body and unnecessarily harass me.

Sd/-
(DR. PRAVEEN GARG)
Dated: 18/6/2007

The final decision in this case will be taken up in its next meeting. “

The matter was considered by the Ethics Committee at its meeting held on 9th & 10th July, 2007 and the decision was as under:-

“The Ethics Committee considered the matter with regard to appeal against order of Delhi Medical Council dated 30.12.2006 made by Mr. M.K.Kamood and decided that Prof. & Head of Surgery, UCMS be requested to assist the Council in this case to take further action in the matter. The complete detail of the case be sent to HOD of Surgery with all other relevant documents requesting him to send his expert opinion within a period of 15 days on receipt of this letter to assist the Council.”

As per above decision, the Professor & HOD, Department of Surgery, UCMS, Delhi was requested to kindly assist by providing his expert opinion within 15 days vide Council's letter dated 20.08.2007 and subsequent reminder dated 30.10.2007.

In response to above, Dr. B.K. Jain, Professor & Head, Department of Surgery, UCMS, Delhi has sent a letter dated nil received in this Council on 28.11.2007 in which it is stated as under :-

“Based on document provided to me, my opinion in the matter mentioned above is as follows :

The order of Delhi Medical Council dated 9.12.2006 has been sent enclosed with the MCI letter dated 30.10.2007. No. order of Delhi Medical Council dated 30.12.2006 (as mentioned under 'subject' in your letter) has been sent to me. Mr. M.K. Kamood has also referred to DMC letter dated 9.12.2006 in his letter.

Therefore my opinion, mentioned below, pertains to appeal made by Mr. M.K.Kamood against order of Delhi Medical Council dated 9.12.2006.

“In my opinion there is no merit in the appeal against order of Delhi Medical Council dated 9.12.2006 made by Mr. M.K. Kamood.”

The matter was considered by the Ethics Committee at its meeting held on 6th & 7th December, 2007 and the decision was as under:-

“The Ethics Committee has taken note of the letter of Dr. B.K. Jain, Prof. & HOD of Surgery, UCMS regarding opinion in this particular case and noted that Dr. Jain opined that there is no merit in the appeal against order of Delhi Medical Council.

The Ethics Committee, therefore, decided that the final decision in this case will be taken in its second next meeting. “

The matter was considered by the Ethics Scrutiny Sub-Committee at its meeting held on 14.01.2008 and the recommendation of the Committee was as under :-

“The Ethics Scrutiny Committee went through all the documents pertaining to this case and has observed that after thorough investigation regarding the circumstances of this case the Delhi Medical Council has arrived at a reason order dated 09.12.2006 where warning was issued to Dr. Praveen Garg and caution was issued to Dr. S. Choudhary of Dr. N.C. Joshi Memorial Hospital.

After examination of all the aspects of this case the Ethics Scrutiny Committee decided to recommend to the Ethics Committee that the decision of Delhi Medical Council be upheld and the order of warning and caution to Dr. Praveen Garg and Dr. S. Choudhary may also be recorded in the IMR against their name.”

The Ethics Scrutiny Committee went through all the documents pertaining to this case and has observed that after thorough investigation regarding the circumstances of this case the Delhi Medical Council has arrived at a reasoned order dated 09.12.2006 where warning was issued to Dr. Praveen Garg and caution was issued to Dr. S. Choudhary of Dr. N.C. Joshi Memorial Hospital.

After examination of all the aspects of this case the Ethics Scrutiny Committee decided to recommend to the Ethics Committee that the decision of Delhi Medical Council be upheld and the order of issuing warning and caution to Dr. Praveen Garg and Dr. S. Choudhary respectively may also be recorded in the IMR against their name.

The Ethics Committee endorsed the above recommendations of the Ethics Scrutiny Committee.”

34. Complaint against Dr. S.M. Tuli, (VIMHANS), New Delhi as alleged by Mr. Dalip Jaswani.

Read: The matter with regard to complaint against Dr. S.M. Tuli, (VIMHANS), New Delhi as alleged by Mr. Dalip Jaswani alongwith the recommendation of Ethics Committee.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the matter with regard to complaint against Dr. S.M. Tuli, (VIMHANS), New Delhi as alleged by Mr. Dalip Jaswani alongwith the recommendation of Ethics Committee and decided to refer the matter back to the Ethics Committee for reconsideration.

35. Meeting invitation on behalf of Federation of State Medical Boards of the United States

Read: The e.mail letter dated 27.02.2008 received from Roxame Huff, IAMRA Secretariat with regard to meeting invitation on behalf of Federation of State Medical Boards of the United States.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the e.mail letter dated 27.02.2008 received from Roxame Huff, IAMRA Secretariat with regard to meeting invitation on behalf of Federation of State Medical Boards of the United States and decided to authorize the President to nominate the representative of the Council to attend the 96th Annual Meeting in San Antonio, Texas on May 1-3, 2008.

36. Increase in MBBS seats from 50 to 100 at Government Medical College, Kota for the academic year 2007-08- consideration of compliance verification report regarding.

Read: The compliance verification inspection report (4th & 5th March, 08) to assess the physical and teaching facilities available at Govt. Medical College, Kota for increase of seats from 50 to 100 for renewal of permission of 2nd batch of students for the academic year 2007-08.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the compliance verification inspection report (4th & 5th March, 08) and observed that the deficiencies pointed out vide Council letter dated 15.6.2007 have been rectified by the institute.

37. Continuation of recognition of MBBS degree granted by Hemwati Nandan Bahuguna Garwahal University, Srinagar in respect of students being trained at Himalayan Institute of Medical Sciences, Dehradun, Uttranchal.

Read: The Council inspectors report (11th & 12th January, 2008) to assess the physical and teaching facilities available at Himalayan Institute of Medical Sciences, Dehradun, Uttranchal for continuation of recognition of MBBS degree granted by Hemwati Nandan Bahuguna Garwahal University, Srinagar together with observation of the institution.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the Council inspectors report (11th & 12th January, 2008) and decided that recognition of MBBS degree granted by Hemwati Nandan Bahuguna Garwahal University, Srinagar in respect of students being trained at Himalayan Institute of Medical Sciences, Dehradun, Uttranchal be continued restricting the number of admissions to 100 (One Hundred) students annually.

38. Inspection of Dr. S. Nijalingappa Medical College & Hospital, Bagalkot to verify the teaching faculty, residence, clinical material, hostels and other infrastructural facilities – consideration of compliance - regarding.

Read: The compliance together with compliance verification inspection report (12th October, 2007) for teaching faculty, residence, clinical material, hostels and other infrastructural facilities available at Dr. S. Nijalingappa Medical College & Hospital, Bagalkot for recognition of MBBS degree.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the compliance together with compliance verification inspection report (12th October, 2007) and decided to verify the compliance by way of an inspection.

39. Minutes of the Finance Committee Meeting held on 05.03.2008 – approval of .

Read: The minutes of the Finance Committee Meeting held on 05.03.2008.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council approved the following minutes of the Finance Committee meeting held on 05.03.2008:

"Minutes of the meeting of the Finance Committee held on 5th March, 2008 at 2 p.m. in the Council Office at Dwarka, New Delhi.

** ** *

Present:

Dr. Ved Prakash Mishra
Dr. Kharangute Anant Y

Chairman
Member

Lt.Col.(Retd.) Dr. A.R.N. Setalvad

- Secretary

Dr. B.C. Das, Chairman of the Finance Committee communicated his inability to attend the meeting. Accordingly, Dr. Ved Prakash Mishra was proposed as the Chairman for the meeting.

1. Minutes of the last meeting: Confirmation of.

The Finance Committee confirmed the minutes of the last meeting held on 13th December, 2007.

2. Minutes of last meeting of Finance Committee – Action Taken thereon.

The Finance Committee noted and approved the action taken by the Office on the various items included in the minutes of the meeting on 13th December, 2007.

3. TA Rules for Inspectors/Members/Others attending the meetings of the Council.

The Finance Committee considered the TA Rules for the Council Inspectors who carry out the inspections on behalf of the Medical Council of India and for the members who attend the meetings on behalf of the Medical Council of India, which are as under:-
TA on Tour/Inspection

TA on Tour/Inspection is from duty point/residence at headquarters to the distant station/airport & vice-versa. It comprises -

- 1) *Fare for journey performed by Air/Rail/Sea/Bus as per entitled class by the direct & shortest route.*
- 2) *Taxi Fare for road journey if not travelled by Air/Bus/ Rail/ Sea by the direct & shortest route.*
- 3) *Taxi Fare for local journey from duty point/residence at head quarter to the nearest Railway Station/Bus Station/Airport and vice-versa.*

Journey by Air

- (a) All those inspectors/Members/Others attending the meetings of the Council, who are in receipt of Pay of Rs. 16400 & above (Basic + NPA + S.I.) are entitled to travel by Air of economy class.
- (b) Those are drawing pay of Rs.12300 and above (Basic+NPA+SI) but below Rs.16400 may also travel by air of economy class on tour if the distance involved is more than 500 km. and the journey cannot be performed overnight by a direct train.

Journey by Private Airlines

The air travel, both domestic and overseas on official account is permissible on private airlines based on better and more competitive ticket fare.

Journey by Rail

- (a) All those inspectors/Members/Others attending the meetings of the Council, who are in receipt of Rs. 16400 & above (Basic + NPA + S.I.), will be entitled for journey on fare of AC First Class in Rajdhani & other train & Executive Class in Shatabdi Express.
- (b) Those are drawing pay of Rs.16399 and below (Basic+NPA+SI) will be entitled for journey on fare of AC 2 tier Class in Rajdhani & other train & AC Chair Car Class in Shatabdi Express.

Journey by Taxi/Bus

- (i) All those inspectors/Members/Others attending the meetings of the Council, who are in receipt of pay of Rs. 16400 (Basic+NPA+SI) and above will be entitled for reimbursement of actual charges of A.C. Taxi/Car/Bus.
- (ii) Those are drawing pay of Rs. 16399 & below (Basic + NPA + S.I.), will be entitled for reimbursement of actual charges of non A/c Taxi/Car/Bus

Local Journey

Actual Taxi/Car fare will be reimbursed for the local journey performed from residence to Airport/Railway Station/Bus Station & vice versa.

Boarding & Lodging

Rates for boarding & lodging charges at various stations/localities shall be applicable as per details given below:-

- | | | |
|------|--|---|
| (i) | Stay in Govt./Public Sector Guesthouse/
Rest Rooms of IAAI/ YMCA/YWCA hostels. | Actual Charges subject
to maximum ceiling limit of |
| (ii) | Stay in hotel and other establishments including
private lodges/guest houses/rest house etc | Rs. 4000/- per day for
A 1 Class (Metro) Cities
Rs. 3000/- for A Class cities
Rs. 2000/- for other cities. |

The stay charges will be reimbursed on production of bill & payment receipt etc. along with the TA Claim.

Professional/Inspection Fee

The inspectors, who are not employee of the Council on consolidated or regular salary, and giving their services on honorary basis, will be entitled to get an amount of Rs. 1,000/- per day, inclusive of the days of journey for conducting the inspection of UG & PG courses.

Those who are invited to attend the meetings on behalf of the Council and are giving their services on honorary basis and who are neither the members nor the employees of the Council, will also be entitled to get an amount of Rs. 1,000/- per day, inclusive of the days of journey for attending such meetings on behalf of the Council.

The Committee recommended that the same may be placed before the Executive Committee for its necessary approval.

4. Audit Inspection Report (DGACR) alongwith Office Comments.

The Finance Committee considered the Audit Inspection Report (DGACR) alongwith office comments and decided as under:-

1. Over payment of Rs. 6.63 lakhs on account of wrong calculation of NPA.

The Committee noted that as per the audit para in terms of F.R. 9 (21) Non-Practicing Allowance (NPA) is admissible to Central Health Service Officers @ 25% of Basic Pay subject to the condition that Pay + NPA does not exceed as 29,500/- per month. Ministry of Finance has clarified vide O.M. No. 7(51)/E-III/95 dated 7/9/1995 that though NPA counts as Pay for all service benefits, it is not part of Basic Pay. Ministry in June, 2004 decided that Dearness Pay (DP) should be excluded for the purpose of determining the limit of Rs. 29,500/-. It was further clarified that Dearness Pay for doctors was to be computed @ 50% of existing Basic Pay excluding NPA and then NPA was to be computed and paid on basic pay + Dearness Pay so calculated. Subsequently in Oct., 2004, the ministry issued further revised instruction for regulating NPA vide O.M. F.No. 105/1/2004-1 C dt. 6th Oct., 2004 vide which the limit of basic pay + NPA + DP was raised from Rs. 29,500/- to Rs. 44,250/-

Again, the manner of calculating DP + NPA was revised. As per new illustration/guidelines the DP was to be calculated on Basic Pay + NPA. However, inclusion of NPA in Basic Pay for calculating DP was in violation of the aforesaid M/o Finance order dated 7/9/1995 which clearly specified that NPA was not part of the basic pay. Further, the wrong computation of DP has resulted in excess calculation payment of NPA, DP and HRA to the doctors.

Total overpayment of Pay & Allowances worked out, in respect of the Doctors whose Pay & Allowances are drawn by MCI works out to Rs. 6.63 lakhs during the year 2004-05 to 2006-07.

The Committee noted that the Ministry of Finance vide its O.M. No. 7(25)E-III(A)/97 dated 15/4/1998 has already notified that the NPA will be treated as Pay for all service matters. Further, it is also emphasized here that the above referred OM dated 15/4/1998 was issued after the expiry of about three years of the earlier OM dated 7/9/1995 and in supersession of all the earlier such orders. Further, the Ministry of Health & Family Welfare has also confirmed vide its OM No. A.45012/11/97-CHS-V dated 7/4/1998 that the NPA shall count as "Pay" for all service benefits including retirement benefits as hitherto and this OM was issued with the approval of Ministry of Finance (Deptt. of Expenditure) U.O. No. 7(25) E-III(A)/97 dated 7/4/1998.

In view of the above, the payment of NPA to Doctors on the method of calculation as prescribed by the Central Govt., Ministry of Finance vide its OM F.No. 105/1/2004 dated 8/10/2004 is not in violation of the guidelines issued time to time by the Ministry of Finance. As such, the present computation of DP and NPA is in order. Hence, para may please be settled.

As such, the Committee recommends to the Executive Committee for approving the same.

2. Non-Utilization of Medical Education Development Fund Rs.10-43 Lakhs.

The Finance Committee noted that the audit para has brought out that the Sub Committee of Medical Council of India in its meeting held on 8th Oct., 1992 recommended creation of a fund for furtherance of Medical Education named "Medical Education Fund". The MCI created earmarked endowment fund from the donation received from the donors. From the records/account for the year 2006-07 it has been observed that the fund amounting to Rs. 10.43 lakh has not been utilized for the purpose for which the fund was created. This was also pointed out in previous Audit Report. Thus, the very purpose/objectives of the fund has been defeated.

The Committee therefore proposes that the available money in the bank account of this fund may be utilized for payment of consolidated salary to the newly appointed Director, Academic Cell, till the money is available in the Fund A/c, so that the audit para could be settled.

As such, the Committee recommends to the Executive Committee for approving the same.

3. Irregular Payment of Professional Fee/Honorarium of Rs. 2.07 lakhs to Inspectors.

The Committee noted that the audit para has brought out that in terms of GOI decision No. (1) under SR 51, of Swamy's FR & SR, Part II, rates of DA for halt at various stations/localities during tour, also includes hotel rent as well, wherein due consideration, of expensive localities, have been taken care of. The Inspectors are thus entitled, to claim DA, as per classification of cities during their tour but contrary to this provision they are being paid Rs. 1500/- per day as professional fee/honorarium for making their own arrangement of stay at respective station plus DA & actual expenses of Air/Rail fare. A test check of records revealed that during March, 2007 an amount of Rs. 2.07 lakhs was paid to inspectors in addition to their expenses on actual Air/rail journey and ordinary DA.

The Committee further noted that that the Council has reimbursed the TA Claim of Inspectors as per the guidelines issued by Govt. of India under FR & SR Part II. The inspectors are being paid Rs. 1500/- per day instead of hotel stay charges, when they are on tour for inspection on behalf of MCI. Since MCI is an autonomous organization therefore the payment of Rs. 1500/- per day has been approved by the governing body of MCI at its meeting held on 24th March, 2003. However, all the payments towards inspection charges have been made from the MCI-Own Resources A/c.

As such, the Committee recommends to the Executive Committee for approving the same.

4. Non-Utilization of Guest House, wastage/blockage of fund.

The Committee noted that the audit para has brought out that the MCI constructed its own Guest House at the cost of Rs. 2.92 crore. The building was handed over to MCI by the contractor in March, 2006. After that MCI incurred an expenditure of Rs. Lakh on purchase of TV, Double Bed, Bed sheet, Room A.C. etc for the furnishing of various rooms of Guest House during the period 2005-06 and 2006-07. But during scrutiny of records and information provided by the Council in respect of occupancy of the Guest House was NIL till Nov., 2007.

Non-utilization of Guest House resulted in non-utilization of furnishing items and building worth Rs. -----

The Committee further noted that the utilization of the Guest House has been started from December, 2007 by the members of various sub-committees when they come to Delhi for attending the meetings.

The details of the visitors/members of Council, who occupied the rooms in MCI Guest House during the month of Dec., 2007 are hereunder for reference:

S.No.	Room No.	Name of the Member	Date of Stay
1.	102	Dr. D.K. Roy	13 th to 15 th Dec., 2007
2.	501	Dr. Shri Narayana Chaudhary	13 th to 16 th Dec., 2007
3.	502	Dr. J.N. Joshi	13 th to 17 th Dec., 2007
4.	105	Dr. A. Y. Kharangate	14 th to 15 th Dec., 2007
5.	202	Dr. Uma Pradhan	14 th to 18 th Dec., 2007
6.	205	Dr. B.P. Dubey	15 th to 16 th Dec., 2007
7.	301-A	Dr. P.C. Kesavanakutty Nair	15 th to 16 th Dec., 2007
8.	301-B	Dr. Rani Bhaskaran	15 th to 16 th Dec., 2007
9.	204	Dr. Mukesh Sharma	15 th to 15 th Dec., 2007
10.	103	Dr. D.G. Borah	16 th to 19 th Dec., 2007

The above facts have shown that the rooms of guesthouse are being used, therefore the para may please be settled. As such, the Committee recommends to the Executive Committee for approving the same.

5. Inadmissible payment of conveyance hire for local journey.

The Committee noted that the audit para has brought out that a scrutiny of paid vouchers for the month of March, 2007 revealed that reimbursement of conveyance charges was being made to the employees for attending the office on holidays every month. It was, further noticed that no such orders for attending the office on holidays were issued by head of the department. Actual conveyance charges hire charges were being paid to the employees each month irrespective of the ceiling of Rs. 150/- and in some cases taxi charges were paid to the official irrespective of their entitlement. This was also pointed out in previous IR.

The Committee further noted that the reimbursement of transportation/ conveyance charges for attending office on holidays has made according to the orders issued by Govt. of India vide O.M. No. 1(7) EII (A)/98 dated 31/7/1998 which has reproduced hereunder for ready reference:

“The undersigned is directed to refer to the instructions regarding reimbursement of conveyance charges contained in Sl. No. 3 of Annexure to Schedule V of DFPRs and to state that in the context of this Ministry's OM No. 21(1)-E, II(B)/97, dated 3/10/1997 (vide Sl. No. 199 of Swamy's Annual, 1997) relating to grant of transport allowance to Central Govt. employees, clarifications have been sought by some Department/Offices as to whether the above provisions of the DFPRs would undergo any change/become redundant.

The matter has been considered in this Department and it is clarified that transport allowance has been given to Government employees for meeting expenses incurred on commuting between the place of residence and the place of duty, whereas conveyance charges are reimbursed, subject to the conditions specified in Column (4) Item 3 of Annexure to Schedule V of DFPRs mainly for the following reasons:-

- When a non-gazetted employee is deputed on duty to a place at some distance from his office within the municipal limits of the city in which his office is situated or when a gazetted employee performs a journey in the public interest, within the municipal limits of the city in which his headquarters is situated, in a conveyances when a staff car is not available.
- For attending office on Saturday, Sundays and closed holidays.
- When an employee is summoned to office outside the ordinary hours of duty or is detained in office beyond 8.00 p.m. and has to return home between 8.00 p.m. and 6.00 p.m.

3. With the issue of orders for transport allowance, while (a) and (b) would continue to hold good, (c) above would require to be deleted since the commutation of the employee to and from office is taken care of by the payment of transport allowance. Accordingly, an amendment deleting Paragraph 6 (vi) in Column (4) against Item 3 of Annexure to Schedule V in DFPRs is being issued.”

In view of the above the payment of conveyance charges to the employees of Council for attending office on holidays is according to the rules framed by Govt. of India for its employees. So para may be settled. As such, the Committee recommends to the Executive Committee for approving the same.

6. Creation of Reserve Fund of Rs. 11.80 Crore without the approval of the Govt.

The Committee noted that the audit para has brought out that a Reserve Fund had been created by the Medical Council of India in the year 2004 for the purpose of mitigating the financial liability towards the payment of unforeseen contingent expenditure etc. and transferred Rs.11.80 crore in the fund during the year 2005-06 and 2006-07 without the approval of the Govt. and also no monetary limit of fund has been fixed so far.

The Committee further noted that the MCI has transferred some surplus fund from the account of its Own Resources to the Reserve Account for mitigating the unforeseen expenditures in future due to increase in staff strength and their pay structure on implementation of sixth Pay Commission Report and other contingent expenditures.

The income from other sources of MCI can decrease as had happened during earlier years. It is further stated that at any stage of time when opening of new medical college, starting of new PG courses and/or increase in intake capacity at existing medical colleges would be saturated, the registration fee and annual inspection fee in addition to this accumulation in Reserve Fund will be the source of income of Council to meet day to day expenses.

The Grant-in-aid from Central Govt. is limited upto 60 lakhs under Non-Plan Scheme which is only 5% of the total expenses incurred on salaries, TA/DA for meetings and other contingencies for day to day activities of Council.

Therefore, it has felt necessary to accumulate the surplus fund out of MCI-Own Resources A/c for future obligations.

Further, Medical Council of India is an autonomous body and there is no such provision in the IMC Act to obtain permission from Ministry of Finance on the matter of funds utilization and presentation of funds in the Statement of Accounts.

It is emphasized here that the whole fund is available into the accounts of Council and investment in Fixed Deposits with nationalized bank, which has been shown in the Statements of Accounts of Council every year.

In view of the above, the para may be settled. As such, the Committee recommends to the Executive Committee for approving the same.

7. Excess payment of Electricity Charges due to non-improvement of power factor Rs. 4.27 lakhs

The Committee noted that the audit para has brought out that as per agreement with BSES Rajdhani Power Ltd. the consumer shall install at his own expenses suitable apparatus of standard design approved by the COMPANY at the point of commencement of supply as will maintain the average power factor of the load at not less than 0.85 during the period of maximum demand in kilowatt shall be adjusted for the power factor, where the demand is charged for in kilowatts by multiplying by 0.85 and dividing by the power factor actually established and such adjusted value shall be used in determining the billing demand. However, if the consumer fails to take necessary steps to improve the power factor to the aforesaid value of 0.85 within a reasonable time, the COMPANY shall have the right to install the necessary apparatus for improving the power factor and recover the cost thereof from the consumer.

During the scrutiny of records, it was revealed that due to non-improvement in power factor by MCI as per agreement, Council had to pay excess electricity charges amounting to Rs. 4.27 lakh for the year 2006-07 which can be avoided.

The Committee further noted that the process to improve the power factor is in progress by installing the necessary apparatus. The result of new apparatus will be informed to the audit in due course. As such, the Committee recommends to the Executive Committee for approving the same.

8. Excess expenditure amounting to Rs. 11.45 Lakh Incurred due to higher rate on advertisement.

The Committee noted that the audit para has brought out that during the scrutiny of record relating to advertisement, it was noticed that Council engaged M/s Pamm Advertising & Marketing for an advertisement size 16x8 sq. cm. in the following newspaper dt. 15/8/2006:-

- | | | | |
|----|--------------------|---|--------------|
| 1. | The Times of India | - | All Editions |
|----|--------------------|---|--------------|

2.

Hindustan Times

-

All Editions
3.

Indian Express

-

All Editions
4.

The Hindu

-

All Editions

The Council wanted to publish the ad on particular page on (Page 3rd or 5th) of all the above newspapers and placed an order to M/s Pamm Adv. & Marketing to publish the advertisement at commercial rates without considering the DAVP rates and without verifying the commercial rates charged by M/s Pamm Adv. & Marketing. An excess expenditure of Rs._____ for this merely considering the particular page of a newspaper is irregular.

Publication & Edition	Size in Cm.	DAVP Rates per Sq.Cm.	Commercial Rates	DAVP	Total Comm.
The Hindu	8x16	256.19	1465		187520
The Hindustan Times	8x16	--	2630		336640
The Times of India	8x16	579.95	4480		573440
The Indian Express	8x16	75.03	1588		203264

The Committee further noted that it was brought to the notice of the Council office and the Ministry of Health & Family Welfare, Govt. of India that certain entities were issuing misleading advertisements for luring innocent Indian students for admission in MBBS in the foreign universities. The Ministry of Health & Family Welfare repeatedly directed the Council office to issue the advertisements inviting utmost attention of the aspirant candidates wishing to go abroad for obtaining medical qualification. As per Section 13(4A) & (4B), such qualifications are not approved by the MCI and any candidate who acquired basic medical course in abroad cannot be entered in the Indian Medical Register unless he qualifies the Screening Test in India prescribed for such purpose.

Hence, it was decided by the Council on its part to issue an advertisement in all the leading newspapers across the country to warn the aspirants for taking admission in such unapproved institutions. Council further requested to all the Health Secretaries/DME's and State Medical Councils to issue an advertisement in a vernacular language of the respective State/Region for wider publicity and to take immediate measures to stop such institutes/entities/agents from offering such unapproved course so that innocent Indian students are not trapped into the false hope and dream of becoming a doctor by such misleading and deceptive advertisement.

In view of above, the Council office published the said advertisement in the public interest inviting attention of the public at third or fifth pages of the various newspapers. As per the policy of the newspapers the advertisement on DAVP rate can not be published at these particular pages of the newspapers. As such, the expenditure incurred on the said advertisements was in the public interest, hence is not irregular.

In view of above, the audit para may be dropped. As such, the Committee recommends to the Executive Committee for approving the same.

9(a) Periodical Inspection of Recognised Colleges

The Committee noted that the audit para has brought out that the maintenance of standard of medical education is one of the major statutory requirement of the Council. For this purpose Council carried out inspection of medical colleges both Undergraduate & Postgraduate level. These inspection are carried out under section 10A of the IMC Act for starting medical college, Postgraduate courses in an already existing colleges, recognition of MBBS or post graduation qualification and increase of seat in a particular course.

The details of periodical inspection of infrastructural, teaching and other facilities of recognized medical colleges/institution carried out by the Council during the last three years is given below:

Year	No. of Recognised College		No. of College Inspected		No. of Colleges where deficiencies noticed	
	UG	PG	UG	PG	UG	PG
2003-04	161	131	13	NA	8	NA
2004-05	167	145	11	NA	10	NA
2005-06	174	152	12	NA	03	NA
2006-07	181	156	60	NA	11	NA

The Council stated that no time frame has been prescribed in the regulation, however, Periodical inspection of recognized medical college falls due after every five years from its recognition. The percentage of periodical inspection of total UG recognized college during 2003-04 to 2006-07 was between 3.9 to 30% only. During 2005-06 no inspection of UG colleges was carried out and in 2006-07 only 61 colleges were inspected. As regards, inspection of colleges where PG courses are being run, no inspection was carried out during the above period. However, the Council didn't have any details in r/o colleges due for periodical inspection, during the above years. It is evident that periodical inspection even after five years gap were also not being carried out by the Council in no. of cases. Further, the deficiencies in parameters fixed for continuance of MBBS qualification, noticed in the colleges inspected during 2003-04 to 2006-07 was 42 percent. Keeping in view high percentage of deficiencies, it is suggested that emphasis may be laid on periodical inspection so that the standard of medical education could be maintained

The Committee further noted that due to the increase in the number of inspections u/s 10(A) for LOI/LOP/Increase of seats, the periodical inspections were carried out less than the number of inspections which were to be carried out. However, during the current financial year 2007-08, the Council office has carried out 95 periodical inspections including inspections for compliance verification till Feb, 2008 which is more than 50% of the inspections of the recognized medical colleges. The more efforts are also being made to carry out all the inspections due for continuation of recognition u/s 19 of the IMC Act, 1956.

9(b) **Admission in Excess of Intake Capacity**

The Committee noted that the audit para has brought out that as per Section 10 B(3) of Indian Medical Council Act, 1956, where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Govt. in accordance with the provision of section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognized medical qualification for the purpose of this Act. Despite the fact the student admitted in excess of intake capacity of colleges, are not eligible for registration in Medical Council of India and State Medical Councils, there were cases of admission in excess of intake capacity in various medical colleges as detailed below:

Information of students admitted in excess of Intake Capacity during the year 2006-07 (PG & UG both).

Sl. No	Name of the College	No. of Sanctioned Intake	No. of Student Admitted	No. of Student admitted in excess of Intake Capacity during 06-07
1.	S.V. Medical College, Tirupati	05	18	13
2.	S.V. Medical College, Tirupati	2	3	1
3.	Darbhanga Med. College, Laheriasarai	4	8	4
4.	Med. College, Thiruvananthapuram	17	21	4
5.	T.N. Medical College, Bombay	6	10	4
6.	Govt. Med. College, Nanded	2	4	2
7.	Grant Med. College, Bombay	5	15	5
8.	Christian Med. College, Vellore	3	5	5
9.	Instt. of Med. Sc., BHU, Varanasi	2	3	1
10.	K. G's Med. College, Lucknow	18	30	8
11.	Medical College, Calcutta	6	22	8
12.	AFMC, Pune	2	3	1
13.	MGM Med. College, Jamshedpur	50	52	2
14.	Patliputra Med. College, Dhanbad	50	53	3
15.	Chengalpattu Med. College, Chengalpattu	50	54	4
16.	Coimbatore Med. College, Coimbatore	150	154	4
17.	KAP Viswanathan Govt. Med. College, Trichy	100	102	2
18.	Madurai Med. College, Madurai	155	160	5
19.	Mohan Kumaramangalam Med. College, Salem	75	79	4
20.	Thanjavur Med. College, Thanjavur	150	156	6
21.	Tirunelveli Med. College, Tirunelveli	150	151	1

Though, the excess no. of students admitted are not eligible, for registration under IMC Act, 1956, the medical colleges continue to admit the student in excess of approved seating capacity fulfilling their own self-interest, at the cost of the career of these student

The Committee also noted the following:-

a. Admission in Excess of Intake Capacity (PG):

As per the Medical Council of India (Criteria for identification of students admitted in excess of admission capacity of medical colleges) Regulations 1997, the Council prior to the start of undergraduate/postgraduate academic medical course, intimate the medical colleges and State/Union Territory Governments, the sanctioned intake capacity of the students for undergraduate/postgraduate courses in medical colleges.

All the medical colleges are requested to furnish list of students admitted during each academic year for MBBS & postgraduate courses to the Council within one month of the closure of the admission.

All matters relating to excess admission of students is decided by the Council taking into account, the list furnished to the Council by a competent authority and the admission capacity fixed for students lower down in the list shall be treated to be admitted against the increase in admission capacity to the extent of excess admissions. The students admitted through All India Entrance Examination/Central Pool Quota/Mandatory Reservation for Scheduled Castes/Scheduled Tribes, etc. are included within the fixed admission capacity.

No Medical Qualification granted to any identified students of the Medical College which comes under the excess admission shall be recognised medical qualification for the purpose of Indian Medical Council Act 1956 (102 of 1956). The names and other particulars of students so identified are intimated by the Council to all concerned authorities i.e. Medical Colleges, Universities, State Government and the State Medical Council's for taking action under the provisions of the Act.

b. Admission in Excess of Intake Capacity (UG):

Regarding excess admissions made by various medical colleges/institutions for the academic year 2006-07, it may be stated that the matter in respect of MGM Medical College, Jamshedpur and Patliputra Medical College, Dhanbad was placed before the Executive Committee of this Council at its meeting held on 02.12.06 and as per the decision of the Executive Committee, notice have been issued to the concerned medical colleges with the directions to discharge the excess students who were lowest in merit and admitted over and above the sanctioned intake of their college.

Regarding the excess admissions made by the Government Medical Colleges of Tamil Nadu whose names are appeared from Sl. No. 15 to 21, it may be stated that the matter was also placed before the Executive Committee at its meeting held on 02.12.06 for consideration and the Executive Committee of the Council decided to take legal opinion from the Council Advocate, as such medical colleges had admitted excess students under 50% rule of Reservation Quota in compliance to the orders of the Hon'ble Supreme Court of India in IA 34/2006 for SLP No. 13526/1993 dated 01.05.06.

10. Irregularities in TA Bills

The Committee noted that audit para has brought out that the Medical Council of India incurred heavy expenditure on TA (Rs.) during 2006-07. In most of the cases journey was performed by Air by the claimer as members of General Body, Executive Committee, Sub-Committee and various inspectors engaged for inspection of various Medical Colleges. During the scrutiny of TA bills, it was noticed that Council Reimbursed the air fare for return journey to the members of various committees, who visited MCI to attend the various meetings.

The Committee further noted that the the payment of TA/DA claims submitted by the members of various committees are being made on the guidelines prescribed by the Central Govt. for "Travelling Allowance" and the documents like - copy of Air Ticket for to & fro journey, bill of stay, if any, are also attached with all the TA claims before payment as advised by the audit. Hence, the para may please be dropped. As such, the Committee recommends to the Executive Committee for approving the same.

11. Litigation Cases – Enormous Expenditure of Rs. 468.09 Lakhs.

The Committee noted that the audit para has brought out that during scrutiny of records it was observed that the Council had been defending lot of court cases through their Counsels for accomplishment of these objectives. The table below indicates, the considerable increase in the litigation cases despite, incurring huge spending on litigation charges by the Council.

Year	Opening	Additions	No. of Pending Cases	Expenditure
------	---------	-----------	----------------------	-------------

Balance	during the	Court Cases	Settled incurred.	(Rs. In lakh)
2003-04	430	104	534	- NA - 150.17
2004-05	534	312	846	- do - 184.55
2005-06	846	120	966	- do - 133.37
2006-07	966	--	943	23 --
(as on 1/7/06)				

The Committee noted that the Council had not reviewed the litigation process to find out reasons for increase in number of cases thereby reducing the expenditure. Effective steps may please be taken to get the long outstanding cases.

The Committee further noted that the Medical Council of India has a penal of Sr. Advocates/Advocates and also a retainer advocate for legal cases. The Council has to defend litigation cases at all level at a very short notice from Central Govt. & respective courts where it is imperative to safe guard the interest of the Council. Council is also maintaining a register where all the details of Court cases, new or settled, as the case may be, are recorded on the basis of informations received from respective courts. The provision of sufficient amount for expenditure in r/o legal cases has been made every year in the Council's Budget & Revised Budget Estimates. The rates of Fee payable to Legal Counsels have also approved by the Finance Committee & Executive Committee of the Council.

However, such expenditures are being met from MCI-Own Receipts as Govt. Grant-in-aid is hardly sufficient for expenditure on salary TA/DA, Stationery, telephone etc. It is also mentioned here that more than 80% cases have been decided in favour of MCI because these cases have pleaded by the learned Advocates & Sr. Advocates. MCI has also engaged standing Counsels in the Hon'ble courts of other state wherever necessary

In view of the above, para may please be settled. As such, the Committee recommends to the Executive Committee for approving the same.

5. Facilities of Internet connection to all the members of Executive Committee and Postgraduate Medical Education Committee.

The Finance Committee noted that the members of the Executive Committee & PG Medical Education Committee of the Council have to remain in contact with the functionaries & the executives of the Council and Govt. Agencies for smooth running and conduct of business of the Council. They also have to remain in touch with other members of Committees. As this scheduling and planning has to be done when they are on the move, communication by mobile internet is essential to dispose of their duties in the interest of Council.

The Committee further noted that with reduction in the tariff of mobile telephone & the cost of Internet connection has also come down considerably than what was prevailing before. With the result that the mobile internet connection has become very cheap mode of communication, which is very effective and very convenient also. In this regards, Govt. of India, Ministry of Finance has also issued an O.M. No. 7 (14)/C&V/2006 dated 14th November, 2006 which is reproduced hereunder:

"there have been many changes in the field of telecommunications and major technological advancements have taken place. This has brought internet, mobile facilities to the domain of the common people. Many service providers with various schemes have also entered into the market. Further, usage of telecommunications services has proliferated. Therefore, it is imperative that Government officers adopt to the changing trends in communication....

Keeping this in view and the technology available in the field of communication, the existing instructions on the subject have been reviewed. The existing entitlement regarding reimbursement of telephone charges of residential telephones provided to the officers as also on the mobile phones to the entitled officers to the Government of India, and broadband facility at home has been converged into a single package....

The Committee further noted that since the laptop computer is also being provided to each member of Council during the ensuing meeting of General Body of MCI in the month of March, 2008, therefore the Committee recommends that one time cost of Internet connection card to all the members of Executive Committee and PG Medical Education Committee be reimbursed. The recommendation be placed before the Executive Committee for approval.

6. Medical Education Development Fund.

The Finance Committee noted that the Sub-Committee of MCI at its meeting held on 8th Oct., 1992 recommended for creation of a Fund for furtherance of Medical Education. This Fund Account was created in the name & Style as "Medical Education Development Fund" with

donations received from the donors only and no Council money was involved & utilized for the activities of this fund.

Further, it is observed that an amount of Rs. 55,774/- was spent during the year 2002-03 towards payment of salary to the consultant, and now Rs. 10.43 lakh (Fixed Deposit) is lying ideal in this fund account which has also been objected by the Govt. Audit (DGACR).

In view of the above facts, the Finance Committee proposed that the "Medical Education Development Fund A/c" may be kept separate from the statement of Accounts of the Council or the available money in the bank account of this fund may be utilized for payment of consolidated salary to the newly appointed Director, Academic Cell till the money is available in the Fund A/c, so that the audit para could be settled. The recommendation be placed before the Executive Committee for approval.

7. **Settlement of Final bill payment of M/s. L&T Ltd.**

The Finance Committee noted that the payment of final running bill of M/s. L&T for Rs. 27,94,714/- was placed before the Building Committee at its meeting held on 3.3.2005 and the Committee decided as under:-

"The Building Committee considered the request of M/s. L&T and also the suggestions given by the Management Consultants regarding payment of final bill of Rs.27,94,714/- of M/s. L&T for the civil work. As per the suggestions of the Management Consultants, the Committee decided to make payment of final bill withholding Rs.10.00 lakhs".

As per the decision of the Building Committee, Rs.10.00 lakhs had been with held before making payment and Rs.18,55,714/- was paid to M/s. L&T Ltd. towards final bill. However, in the audit objection para 1(a)& (b) and 5 regarding "avoidable expenditure of Rs.68.07 lakh on cost escalation" and "Non-recovery of compensation for delay" and "recovery of Rs. 1.44 lac from M/s. L&T Ltd.", it is objected that no payment for delay of 171 days after 12.10.2003 to 31.3.2004 has not been deducted from the contractor's payment.

In this connection, it is stated that as per provision contained in clause 2 of the agreement, Contractor was liable to pay compensation @ Rs.50,000/- per day subject to maximum of Rs. 10.00 lakh for delay in completion of the work. It is also stated that Rs. 1.44 lakhs had to be recovered from M/s. L&T for rectification of defaults claimed by M/s. Sacred Constructions.

In view of total recoverable amount is Rs. 1.44 lakhs for rectification defaults and Rs. 10 lakhs towards escalation as per the terms & conditions of the agreement, total comes to Rs. 11.44 lakhs. However, the Council had withheld only Rs. 10 lakhs from the final bill.

As such, the Committee recommends that an amount of Rs. 10.00 lakhs of M/s. L&T which is pending for the Council towards penalty for the delay and rectification of defaults be forfeited, whereby the audit objection in para 1(a)&(b) and 5 of the previous year may be settled. The recommendation be placed before the Executive Committee for approval.

8. **Rent Charges for Guest House**

The Finance Committee proposes that the rent charges for Guest House be levied as per details below:-

- | | | |
|----|----------------------------------|---------------------|
| 1. | President of the Council | Rent Free |
| 2. | Members of the Council | |
| | (a) On Council's Duty | Rent Free |
| | (b) On Personal Visit | Rs. 500/- per day |
| 3. | Any other outside relevant party | |
| | (a) On Council's Duty | Rent Free |
| | (b) On Personal Visit | Rs. 1,000/- per day |

As such, the Committee recommends to the Executive Committee for approving the same.

9. **Purchase of 125 Nos. Laptops in the Council office.**

The Finance Committee considered the matter with regard to purchase of 125 Nos. Laptops for distribution to the Council Members as the agenda along with the inspection reports is being sent by the Council through electronic medium and noted that the General Body of the Council at its meeting held on 16.11.2007 resolved as under:-

- (i) Computers/Laptops may be made available to the members to assist them in discharging their functions/duties.

- (ii) The computer/laptop will be supplied on receipt of a request signed by the member on form given.
- (iii) A member shall be given a desktop/laptop computer as soon as possible after commencement of his term as Member, Medical Council of India.
- (iv) The period for which a computer/laptop can be made available to a member shall be limited to his/her term of the MCI member.
- (v) The computer(s)/Laptop(s) shall be returned by the member on ceasing to be a member of the Medical Council of India.
- (vi) All computer/laptop stationery and other consumable shall be procured and paid for by the user.
- (vii) The user shall be responsible for loss or damage other than those indemnifiable under insurance policy.
- (viii) The MCI shall get the computers insured.

Further, the Finance Committee considered the minutes of the Purchase Committee dated 22.02.2008, which are reproduced as under:-

The Purchase Committee met in the Council office on 22.02.2008. The office invited quotations from the suppliers through advertisement in the newspapers on 10-11/02/2008 for procurement of 125 Nos. Laptops. The office received nineteen quotations and the Comparative Statement of rates quoted by the various agencies is enclosed.

It may be observed from the comparative statement that following suppliers are at L-I, L-II, L-III, L-IV and L-V respectively:-

- | | | | |
|----|---------------------------------|---|-------|
| 1. | M/s. SES Technologies Ltd. | - | L-I |
| 2. | M/s. GCN Infotech Pvt. Ltd. | - | L-II |
| 3. | M/s. Jain Peripherals Pvt. Ltd. | - | L-III |
| 4. | M/s. Wipro Limited | - | L-IV |
| 5. | M/s HCL Inforystems Limited | - | L-V |

In view of above, the Committee recommends to award the work for procurement of 125 Nos. Laptops to M/s. SES Technologies Ltd. being L-I, whose specifications are as under:-

Inten Celeron M 440 1.86 GHz/ 1 MB L2 Cache / 533 MHz FSB / ATI RC410ME + SB450 chipset / ATI RC410ME Integrated Graphics / Integrated Wireless LAN Support dual band antenna / 512 MB DDR II expandable upto 1 GB Memory / 39.1 cms (15.4) TFT LCD WXGA, 1280x800, Glare type support / 80 GB SATA HDD / Integrated DVD Writer / Windows XP (Home) preloaded / 10/100 MB LAN / 1x8 in 1 Card Reader (External) / 4xUSB2.0 / 1xLine in / 1xMIC / 1xRJ11 Modem / 1xRJ45 LAN / 1xExternal VGA / 1xDC In / 1 Built in MIC / Universal AC Adapter / Integrated 86-key with Windows function keys keyboard / Built-in touch pad with 2-way scroll function, 2 click buttons / 8 Cell Li Ion Battery / 1 year Multi City ONSITE warranty and Carry Bag.

"Agreed subject to the certification on the better configuration of Sahara Brand as per annexure attached herewith as prepared by computer programmer of MCI."

As such, the Committee recommends to the Executive Committee for approving the same."

40. Removal of name of Dr. M.P. Dixit from the Indian Medical Register.

Read: The letter dt. 26.02.2008 received from the Registrar, Rajasthan Medical Council with regard to removal of name of Dr. M.P. Dixit from the Indian Medical Register.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council noted the letter dated 26.02.2008 received from the Registrar, Rajasthan Medical Council, Jaipur intimating that Dr. M.P. Dixit bearing Regn. No. 514, dated 19.6.1961 had expired on 24.02.2008 and his name has been removed from the Register of Registered Medical Practitioners. The Committee decided to remove the name of above-mentioned doctor from the Indian Medical Register and also give intimation in this regard to all the State Medical Councils in the country.

41. Establishment of a new medical college at Udaipur, Rajasthan by Geetanjali Foundation, Udaipur, Rajasthan.

Read: The compliance report and State Government letter dated 25.02.2008 as forwarded by the Central Govt. letter dated 03.03.2008 along with Council Inspectors

report 13th & 14th December, 2007 with regard to establishment of new medical college at Udaipur, Rajasthan by Geetanjali Foundation, Udaipur, Rajasthan.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the compliance report and State Government letter dated 25.02.2008 as forwarded by the Central Govt. letter dated 03.03.2008 along with Council Inspectors report 13th & 14th December, 2007 and decided to verify the compliance by way of an inspection.

42. Purchase of 125 Nos. Laptops in the Council Office.

Read: The matter with regard to purchase of 125 Nos. Laptops for the Council members along with minutes of the meetings of the Finance Committee.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council approved the recommendations of the Finance Committee meeting held on 5.3.2008 which reads as under:-

"The Finance Committee considered the matter with regard to purchase of 125 Nos. Laptops for distribution to the Council Members as the agenda along with the inspection reports is being sent by the Council through electronic medium and noted that the General Body of the Council at its meeting held on 16.11.2007 resolved as under:-

- (i) Computers/Laptops may be made available to the members to assist them in discharging their functions/duties.
- (ii) The computer/laptop will be supplied on receipt of a request signed by the member on form given.
- (iii) A member shall be given a desktop/laptop computer as soon as possible after commencement of his term as Member, Medical Council of India.
- (iv) The period for which a computer/laptop can be made available to a member shall be limited to his/her term of the MCI member.
- (v) The computer(s)/Laptop(s) shall be returned by the member on ceasing to be a member of the Medical Council of India.
- (vi) All computer/laptop stationery and other consumable shall be procured and paid for by the user.
- (vii) The user shall be responsible for loss or damage other than those indemnifiable under insurance policy.
- (viii) The MCI shall get the computers insured.

Further, the Finance Committee considered the minutes of the Purchase Committee dated 22.02.2008, which are reproduced as under:-

The Purchase Committee met in the Council office on 22.02.2008. The office invited quotations from the suppliers through advertisement in the newspapers on 10-11/02/2008 for procurement of 125 Nos. Laptops. The office received nineteen quotations and the Comparative Statement of rates quoted by the various agencies is enclosed.

It may be observed from the comparative statement that following suppliers are at L-I, L-II, L-III, L-IV and L-V respectively:-

- | | | | |
|----|---------------------------------|---|-------|
| 1. | M/s. SES Technologies Ltd. | - | L-I |
| 2. | M/s. GCN Infotech Pvt. Ltd. | - | L-II |
| 3. | M/s. Jain Peripherals Pvt. Ltd. | - | L-III |
| 4. | M/s. Wipro Limited | - | L-IV |
| 5. | M/s HCL Inforystems Limited | - | L-V |

In view of above, the Committee recommends to award the work for procurement of 125 Nos. Laptops to M/s. SES Technologies Ltd. being L-I, whose specifications are as under:-

Inten Celeron M 440 1.86 GHz/ 1 MB L2 Cache / 533 MHz FSB / ATI RC410ME + SB450 chipset / ATI RC410ME Integrated Graphics / Integrated Wireless LAN Support dual band antenna / 512 MB DDR II expandable upto 1 GB Memory / 39.1 cms (15.4) TFT LCD WXGA, 1280x800, Glare type support / 80 GB SATA HDD / Integrated DVD Writer / Windows XP (Home) preloaded / 10/100 MB LAN / 1x8 in 1 Card Reader (External) / 4xUSB2.0 / 1xLine in / 1xMIC / 1xRJ11 Modem / 1xRJ45 LAN / 1xExternal VGA / 1xDC In / 1 Built in MIC / Universal AC Adapter / Integrated 86-key with Windows function keys keyboard / Built-in touch pad with 2-way scroll function, 2 click buttons / 8 Cell Li Ion Battery / 1 year Multi City ONSITE warranty and Carry Bag.

"Agreed subject to the certification on the better configuration of Sahara Brand as per annexure attached herewith as prepared by computer programmer of MCI."

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to award the contract to M/s. SES Technologies Ltd. being the L-1. However, in the first phase, the purchase be limited to 100 numbers of laptops only to provide to the existing members on date.

43. Extension of services of Dr. M.C.R. Vyas as Whole Time Inspector.

Read: The matter with regard to extension of services of Dr. M.C.R. Vyas as Whole Time Inspector.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to extend the services of Dr. M.C.R. Vyas, Whole Time Inspector of the Council for a further period of one year w.e.f. 10.04.2008.

44. Graduate Medical Education Regulations, 1997 – Amendment to the Regulations.

Read: The matter with regards to amendment in Graduate Medical Education Regulations, 1997.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that the existing Section 6 pertaining to 'Migration' and Section 7 pertaining to 'Training Period and Time Distribution' of Graduate Medical Education Regulations, 1997 reads as under:-

“Section 6 “Migration” clause (4) states, “The applicant candidate submits his application for migration, complete in all respects, to all authorities concerned within a period of one month of passing (declaration of results), the first professional Bachelor of Medicine and Bachelor of Surgery (MBBS) examination”.

However, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further observed that these documents are required for processing of the application of migration. Because they are not incorporated within the Regulations itself, considerable time is lost in asking for these documents after the applications are received and processed in the office of the Council. In order to avoid the delay in processing the applications, it is desirable to incorporate the documents required as a part of the Regulations, so that the students while applying for migration is aware of the documents which are required alongwith the application.

“Section 7 “Training Period and Time Distribution, clause (7) states, “Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year.”

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further observed that although, the Regulations provides that the students who pass the supplementary examination can join the main batch because it is not specifically mentioned that he/she can appear in the 2nd MBBS examination only after completing the prescribed period of 18 months of study. Many cases are being filed before different Hon'ble High Courts all over the country to allow the students to appear in the 2nd MBBS examination alongwith the main batch even though they might not have completed the prescribed period of 18 months of study for 2nd Prof. MBBS examination.

Phase II consists of 3 semesters i.e. 18 months. Second MBBS Prof. examination is to be held during 5th semester of Phase II. Therefore, before a student takes second MBBS Prof. examination, he has to complete 18 month's mandatory training. A student who passes first MBBS Prof. examination held in the 2nd semester of Phase I can take second MBBS Prof. examination held in the 5th semester because he completes 18 months' mandatory training. A student who fails in the first MBBS Prof. examination held during the 2nd semester of Phase I cannot even proceed to

Phase II training. Regulation 8(a) states that passing in first MBBS Prof. examination is compulsory before proceeding to Phase II training. Therefore, such a student has to take supplementary examination and pass the first MBBS Prof. examination. By the time, such a student passes the supplementary examination, Phase II training for second MBBS Prof. examination would have already begun. Such a student, therefore, cannot complete 18 months of mandatory training to be eligible to take second MBBS Prof. examination which is held during 5th semester alongwith the main batch.

Although, the Hon'ble Supreme Court as well as High Courts of Bombay, Punjab & Haryana and Madhya Pradesh etc. in various petitions filed before them have upheld the contentions of the Council and have permitted the students to appear in second Prof. examination only after the requisite period of study is completed, it is desirable to clarify the stand of the Council within the Regulation so that unnecessary litigation is avoided.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided that the existing Section 6 and Section 7 respectively are required to be amended as under:-

Section 6: Migration" clause (4)

"The applicant candidate submits his application for migration, complete in all respects alongwith the following documents in original and the prescribed fee to the Medical Council of India within a period of one month of passing (i.e. declaration of result of first Professional MBBS examination):-

- (i) NOC from the relieving college and the university.
- (ii) NOC from the receiving college and the university.
- (iii) In case the migration is sought on medical grounds the candidate shall submit a certificate about his/her illness and resultant disability if any duly certified by the State Medical Board of the State in which he/she is currently studying."

Section 7 "Training Period and Time Distribution,

"The supplementary examination for Ist Professional MBBS examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year provided that the students who pass the supplementary examination shall be allowed to appear in the second professional MBBS examination only after he/she completes the full course of study of three semesters (i.e. 18 months) for the second professional MBBS examination."

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further decided to send a communication to the Central Government for obtaining the approval for amendment of the Regulations u/s 33 of the Indian Medical Council Act, 1956.

45. Minimum Qualifications for Teachers in Medical Institution Regulations, 1998 – Amendment in the Regulations.

Read: The matter with regards to amendment in Minimum Qualifications for Teachers in Medical Institution Regulations, 1998.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that the existing Point No.3 in Schedule-I and point 2, lines 5 & 6 respectively of Minimum Qualifications for Teachers in Medical Institution Regulations, 1998 reads as under:-

Point No.3 in Schedule-I.

“Medical teachers in all Medical Colleges except the Tutors, Residents, Registrars and Demonstrators must possess the requisite recognized Postgraduate Medical qualification in their respective subjects.”

However, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further observed that the present provisions of Minimum Qualifications for Teachers in Medical Institution Regulations, 1998 do not specifically provide that the head of the department in a medical college / institution should possess a recognized postgraduate medical qualification in the respective subject. However, in case the head of the department is found to possess a postgraduate medical qualification which is not recognized by the Medical Council of India, the Postgraduate Committee recommends not to issue Letter of Permission whenever the application for starting the postgraduate course in such a department is evaluated by the Postgraduate Committee.

In order to obviate the practical hardship being faced by the institutions, it is desirable that the requirement that “head of the department who should be the rank of Professor and should possess a recognized postgraduate qualification” should be incorporated in the regulations itself.

Further, it is not specifically provided in the regulations that the Dean / Principal / Director of a medical college / institution, who is the head of the institute and the Medical Superintendent who is the head of the affiliated teaching hospital cannot be the head of the department. It is desirable that the requirement that “Dean / Principal / Director of a medical college / institution who is the head of the institute and the Medical Superintendent of the affiliated teaching hospital who is the head of the hospital cannot be the head of the department” should be incorporated in the regulations for better compliance of the Minimum Standard Requirements for a medical college. Accordingly, amendment in this regard in the regulations be sent to the Central Government for its approval.”

The amendments are required for better compliance of the minimum standard requirement for a medical college.

SCHEDULE-I, point 2, lines 5 & 6

“The Heads of these departments must possess recognized basic university medical degree qualification or equivalent qualification”.

Further, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that there is an overall shortage of teachers possessing medical qualifications in the department of Biochemistry. While in other departments upto 30% of the total number of posts have been permitted for non-medical teachers, in the department of Biochemistry non-medical teachers are permitted to the extent of 50% of the total number of posts in the department. With a view to remove the disparity, the General Body of the Council had permitted the appointment of Head of the department in the department of Biochemistry who is possessing a non-medical qualification. The present amendment is proposed to ratify the decision of the General Body of the Council.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided that the existing Point No.3 in Schedule-I and SCHEDULE-I, point 2, lines 5 & 6 respectively are required to be amended as under:-

Point No.3 in Schedule-I

“Dean / Principal / Director of a medical college / institution, who is the head of the institute and the Medical Superintendent of the affiliated teaching hospital who is the head of the hospital cannot be the head of the department of the medical college / institution. All the departments of a medical college / institution shall be headed by a medical teacher of the rank of the Professor

who possesses a recognized postgraduate medical qualification in the concerned subjects. Medical teachers in all the Medical Colleges except the Tutors, Residents, Registrars and Demonstrators shall possess the requisite recognized Postgraduate Medical qualification in the concerned subjects.”

SCHEDULE-I, point 2, lines 5 & 6

“The Heads of these departments except Biochemistry must possess recognized university medical degree qualification.”

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further decided to send a communication to the Central Government for obtaining the approval for amendment of the Regulations u/s 33 of the Indian Medical Council Act, 1956.

46. **Opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000 – Amendment in the Regulations.**

Read: The matter with regards to the amendments in Opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council observed that the existing “*PART-I: SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT FOR OPENING OF A NEW OR HIGHER COURSE OF STUDY OR TRAINING (INCLUDING A POSTGRADUATE COURSE OF STUDY OR TRAINING) IN A MEDICAL COLLEGE OR INSTITUTION*” AND “*PART-II : SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT TO INCREASE THE ADMISSION CAPACITY IN ANY COURSE OF STUDY OR TRAINING (INCLUDING POSTGRADUATE COURSE OF STUDY OR TRAINING) IN THE EXISTING MEDICAL COLLEGES/INSTITUTIONS*” under Point No. 3.1(1), 3.2 & 3.3 of the Qualifying Criteria of Opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000 reads as under:-

I.

A. PART-I : SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT FOR OPENING OF A NEW OR HIGHER COURSE OF STUDY OR TRAINING (INCLUDING A POSTGRADUATE COURSE OF STUDY OR TRAINING) IN A MEDICAL COLLEGE OR INSTITUTION:

Point No. 3.1(1), 3.2 & 3.3 of the Qualifying Criteria –

3.1(1) “The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate course”;

3.2 “The permission letter regarding desirability and feasibility for opening a new or higher course in the medical college/institution has been obtained by the applicant from the respective State Government or the Union Territory administration” &

3.3 “Letter of University’s permission for starting these courses in the existing medical college/institution has been obtained by the medical college/institution from the University to which it is affiliated.

B. PART-II : SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT TO INCREASE THE ADMISSION CAPACITY IN ANY COURSE OF STUDY OR TRAINING (INCLUDING POSTGRADUATE COURSE OF STUDY OR TRAINING) IN THE EXISTING MEDICAL COLLEGES/INSTITUTIONS:

Point No. 3.1(1), 3.2 & 3.3 of the Qualifying Criteria –

3.1(1) The Medical College/Institution is recognized by the Medical Council of India for running MBBS/PG Diploma/PG Degree/Higher Speciality courses.

3.2 The permission letter regarding desirability and feasibility for opening a new or higher course in the medical college/institution has been obtained by the applicant from the respective State Government or the Union Territory administration.

3(3) "Letter of University's permission for starting these courses in the existing medical college/institution has been obtained by the medical college/institution from the University to which it is affiliated."

II.

The Council shall evaluate the application to accept the desirability and prima-facie feasibility for increasing the admission capacity at the existing medical college/institution and the capability of the medical college/institution to provide the necessary resources and infrastructure for the scheme.

While evaluating the application, the Council may seek further information, clarification or additional documents from the applicant as considered necessary and shall carry out a physical inspection to verify the information, clarification or additional documents supplied by the medical college. The dates of receipt of application for increase in admission capacity in postgraduate courses and processing dates are given in the schedule. The dates of receipt of application and processing of applications in respect of increase of seats in MBBS course shall be as per the schedule included in the Establishment of Medical College Regulations, 1999.

However, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further observed that There is an acute shortage of the teaching faculty in pre-clinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Community Medicine. The institutes which have created infrastructure in terms of teaching faculty and teaching departments for 3rd renewal, would have created adequate infrastructure in terms of teaching faculty, equipment and other infrastructure for pre-clinical and para-clinical departments. It is also desirable that the institutes be encouraged to start postgraduate courses in these above mentioned pre-clinical and para-clinical departments in order to increase the available postgraduate seats in these departments. Hence, it is desirable that the institutes be permitted to start postgraduate courses in these departments without waiting for full recognition of the institute for the award of MBBS degree.

To give effect to the decision of the Postgraduate Committee of the Council taken at its meeting held on 14.03.2008. For better co-ordination for smooth functioning of the institute, the Essentiality Certificate and Consent of Affiliation, which are required for establishment of medical colleges, should also be provided whenever a new course, including postgraduate course or increase in intake are proposed. At present, although Regulations provide for these documents to be submitted along with the application for starting a new course (including postgraduate course) or increase in intake, no format has been prescribed in the Regulations. It is desirable that these two certificates be provided in the prescribed format as per Regulations which would make evaluation of application a smooth process.

To give effect to the decision of the General Body of the Council taken at its meeting held on 10th March, 2007 and for better evaluation of an institute for conducting postgraduate studies which required that the teaching faculty, instrumentation, clinical material, hostel and other infrastructure facilities available in the institute must be as per the Minimum Standard Requirements prescribed in the Regulations.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided that the existing Regulation in Part-I, Point No. 3.1(1), 3.2 & 3.3 and in Part II, Point No. 3.1(1), 3.2 & 3.3 respectively are required to be amended as under:-

Part-I, Point No. 3.1(1), 3.2 & 3.3**I.**

“Part-I : SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT FOR OPENING OF A NEW OR HIGHER COURSE OF STUDY OR TRAINING (INCLUDING A POSTGRADUATE COURSE OF STUDY OR TRAINING) IN A MEDICAL COLLEGE OR INSTITUTION:

Point No. 3.1(1), 3.2 & 3.3 of the Qualifying Criteria –

“3.1(1) The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate course; however, the medical college/ institute which is not yet recognized by the Medical Council of India for the award of MBBS degree may apply for starting of a postgraduate course in pre-clinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine & Community Medicine at the time of 3rd renewal – i.e. along with the admission of 4th batch for the MBBS course.

3.2 That Essentiality Certificate in the prescribed format regarding no objection of the State Government/ Union Territory administration for opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) in the medical college/institution and availability of the adequate clinical material as per the Council Regulations have been obtained by the applicant from the concerned State Govt./Union Territory administration, as the case may be.

3.3 That Consent of Affiliation in the prescribed format with respect to opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) has been obtained by the medical college/institution from the University to which it is affiliated.”

Part-II, Point No. 3.1(1), 3.2 & 3.3

“B. PART-II : SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT TO INCREASE THE ADMISSION CAPACITY IN ANY COURSE OF STUDY OR TRAINING (INCLUDING POSTGRADUATE COURSE OF STUDY OR TRAINING) IN THE EXISTING MEDICAL COLLEGES/INSTITUTIONS:

Point No. 3.1(1), 3.2 & 3.3 of the Qualifying Criteria –

“3.1(1): The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate course; however, the medical college/ institute which is not yet recognized by the Medical Council of India for the award of MBBS degree may apply for increase of intake in postgraduate courses in pre-clinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine & Community Medicine at the time of 4th renewal – i.e. along with the admission of 5th batch for the MBBS course.

“3.2 That Essentiality Certificate in the prescribed format regarding no objection of the State Government/ Union Territory administration for opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) in the medical college/institution and availability of the adequate clinical material as per the

Council Regulations have been obtained by the applicant from the concerned State Govt./Union Territory administration, as the case may be.

3.3 That Consent of Affiliation in the prescribed format with respect to opening of New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) has been obtained by the medical college/institution from the University to which it is affiliated.”

II.

“The Council shall evaluate the application to accept the desirability and prima-facie feasibility for increasing the admission capacity at the existing medical college/institution and the capability of the medical college/institution to provide the necessary resources and infrastructure for the scheme.

“While evaluating the application, the Council may seek further information, clarification or additional documents from the applicant as considered necessary and shall carry out an inspection to ascertain and assess the facilities of teaching faculty, residents, clinical material, hostels and other infrastructure facilities etc. vis-a-vis the minimum standard requirements for the number of students for which the college is recognized for the award of MBBS degree as per the Minimum Standard Requirements for the Medical College for 50/100/150 Regulations, 1999.

The Council shall process the application for starting of a postgraduate course or for increase of annual intake of postgraduate courses only in case the college meets with the facilities for teaching faculty, residents, clinical material, hostels and other infrastructure facilities as required under the Regulations for the respective number of students for which the college is recognized for the award of MBBS degree and then shall carry out the physical inspection to verify the information, clarification, additional documents supplied by the medical college, teaching faculty, residents, clinical material and instrumentation and other infrastructure facilities in the concerned department in which the postgraduate course is proposed to be established or increase of seats in the concerned postgraduate course is proposed.

The dates of receipt of application for increase in admission capacity in postgraduate courses and processing dates are given in the schedule. The dates of receipt of application and processing of applications in respect of increase of seats in MBBS course shall be as per the schedule included in the Establishment of Medical College Regulations, 1999.”

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council further decided to send a communication to the Central Government for obtaining the approval for amendment of the Regulations u/s 33 of the Indian Medical Council Act, 1956.

47. **Registration of candidates acquiring foreign medical qualifications - CWP No.8056/2007 – Yash Ahuja & Ors. Vs. UOI & Ors. and Writ Petition © No. 8352/2007 – Avadesh Ahuja & Ors. Vs. MCI & Ors.**

Read: The matter with regard to registration of candidates acquiring foreign medical qualifications - CWP No.8056/2007 – Yash Ahuja & Ors. Vs. UOI & Ors. and Writ Petition © No. 8352/2007 – Avadesh Ahuja & Ors. Vs. MCI & Ors.

The Members of the Ad-hoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered this issue of qualifying the screening test by the candidates acquiring foreign medical qualifications from institutes abroad covered u/s 12(2) of the Indian Medical Council Act, 1956. With regard to the affidavits of MCI and the Ministry of Health, Govt. of India filed in CWP No.8056/2007 – Yash Ahuja & Ors. Vs. UOI & Ors. it was observed that this matter

was also considered by the Executive Committee & Ad-hoc Committee at its meeting held on 03.03.2007 wherein it was decided as under : -

Item No. 32. Manipal College of Medical Sciences, Pokhara, Nepal

"The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered the inspection report (21st & 22nd February, 2007) and observed the following in the inspection report:-

"Dr. O.P. Talwar, the Principal (Acting), Manipal College of Medical Sciences, Pokhara did not allow the inspection and gave a letter dated 21st February, 2007 which states that :-

"there has been no communication to this college either from MCI or Ministry of Health, Govt. of India, regarding the issues raised in our earlier letters of January & Feb., 2007. In the absence of this, the situation remains unchanged with regards to the previous visit of MCI.

Currently the Dean, Dr. S.K. Dham is in the USA. In the capacity of Acting Principal I am not in a position to take a stand contrary to the earlier decision of the permanent incumbent.

Further, we need to respect the position of the Nepal Medical Council and Kathmandu University regarding the protocols for such inspections. Though a copy of your letter has been addressed to them, we have not received any communication from the regulatory bodies, concerned with medical education in Nepal.

During the past 12 years, we have always been sensitive to the expectations of the Nepal Medical Council and Kathmandu University with regards to observance of standards, protocols and procedures stipulated by them. While working in a foreign country, these imperatives must be honoured by the college.

Under the above circumstances the inspection will not be feasible at this juncture."

The Acting Principal, Manipal College of Medical Sciences, Pokhara, Nepal did not permit inspection of either the college or the Hospital on the first day. On the subsequent day, there was Gandaki Bandh in Pokhara. We requested the Acting Principal to provide an ambulance for visit to the college, which he refused. Subsequently, despite repeated requests on telephone, the Principal did not permit the inspection. There was no further interaction with the college authorities and inspection was not possible."

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council also perused the letter dated 19.02.2007 written by Dr. O.P. Talwar, Acting Dean, Manipal College of Medical Sciences, Pokhara, Nepal stating as under:-

".....We are not entirely clear about the following and seek your indulgence for clarification on them:

- (i) *We are a foreign institution permanently affiliated to Kathmandu University and under the aegis of the Nepal Medical Council under a statutory reciprocity scheme recognized by the Union of India. As far as we understand this scheme, and assuming that there is a power to do so, it is for the Central Government of India to reciprocally re-work the statutory arrangement with the Nepal authorities in the event of the need and power to do so.*
- (ii) *On two occasions in January 2007 and February, 2007, you have now suggested inspection suo moto rather than on the instruction of the Central Government of India. No less surprising, is the request of such inspection out of the blue which in January, 2007 seemed to have been added as an addendum to an inspection of another college.*
- (iii) *While we are seeking legal advice on the terms of the extra-territorial operation of the Act as between the various authorities, we would like to know (a) what has necessitated these emergency requests and (b) whether they are routine; and if so on what periodicity or cause.*
- (iv) *Since there are a large number of institutions and universities listed under the Second Schedule, we are constrained to ask whether the MCI follows a practice of visiting other institutions whether in the UK, Australia, Burma, Canada, Ceylon, Hong Kong, Italy, Japan, Malta, New Zealand, South Africa, Pakistan, Singapore, Ireland and Nepal. If this is so, is it done routinely under conditions of reciprocal complementarity. If not*

under what circumstances, is such a cause of action based. It would also be useful to know when and where these inspections have been made in the past.

4. *We would also request that Prof. S.K. Dham, the Dean, is currently abroad on a study visit, keeping in mind the unusual nature of the request made by MCI, we request that a visit if any, by a team from MCI be deferred till his return.*

5. *We assure you that we comply with the standards in accordance with the regulations applicable to us but would like to know to whom and in what way we are directly accountable to councils in other jurisdictions. Since our degree is recognized elsewhere, it is important to know if we are open to inspection globally by you and by councils of other countries.....”*

The members of the Adhoc Committee appointed by the Hon’ble Supreme Court and of the Executive Committee of the Council also perused the letter dated 21.02.2007 written by Dr. O.P. Talwar, Acting Dean, Manipal College of Medical Sciences, Pokhara, Nepal stating as under:-

“.....In the absence of this, the situation remains unchanged with regards to the previous visit of MCI.

Currently the Dean, Dr. S.K. Dham is in the USA. In the capacity of Acting Principal I am not in a position to take a stand contrary to the earlier decision of the permanent incumbent.

Further, we need to respect the position of the Nepal Medical Council and Kathmandu University regarding the protocols for such inspections. Though a copy of your letter has been addressed to them, we have not received any communication from the regulatory bodies, concerned with medical education in Nepal.

During the past 12 years, we have always been sensitive to the expectations of the Nepal Medical Council and Kathmandu University with regards to observance of standards, protocols and procedures stipulated by them. While working in a foreign country, these imperatives must be honoured by the college.

Under the above circumstances the inspection will not be feasible at this juncture.”

The members of the Adhoc Committee appointed by the Hon’ble Supreme Court and of the Executive Committee of the Council while perusing the inspection report of the inspection carried out by the Council Inspectors on 19th & 20th January, 2007 also observed as under:-

- 1. The College admits 75 students every 6 months i.e. 150 students per year in 2 batches. The details of admissions were not provided.
- 2. Auditorium: Not available. An open-air theatre with stage is available. No seating arrangements are provided.
- 3. Examination Hall : Not available in the college building.
- 4. Common room for boys and girls: Not Available.
- 5. Animal House: Not seen in the college building.
- 6. There is no lecture theatre in the hospital.
- 7. Central Library: Total area available is 600sq.mt. approx. which is inadequate The number of seats available for the reading rooms are as under:-

		Rooms	Capacity
a.	Students	2 Halls	100 & 150
b.	Interns & Residents	Nil	-
c.	Staff	1 reading room	15
	Total	3	265

The staff available in the library:

Librarian: Nil
Deputy/Assistant Librarian: 1
Others: 3

Total numbers of journals subscribed are 30 Indian and 50 Foreign which is not as per norms.

8. Central photography cum audio-visual units are not available.
9. There is no separate hostel for interns, residents & PGs. They are accommodated in the girls and boys hostel respectively. Accommodation is available for only 146 students which is grossly inadequate.
10. Nurses are residing on the top floor of the hospital building, which was not shown to the inspection team.
11. Sports and recreation facilities are not available.
12. The following deficiencies were observed during the visit to the college:-
 - [i] There were a total of 8 faculty members, 6 non-teaching staff & 6 ancillary staff present in the entire college. Boys hostel has 53 rooms, which accommodated 106 boys and girls hostel has 20 rooms with accommodation for 40 girls. One of the girls hostel is under renovation. There is no separate hostel for interns, residents & nurses. The nurses are accommodated on the top floor of the hospital building & the interns & residents are accommodated in the girls & boys hostel respectively.
 - [ii] There are no demonstration rooms in any department. However, arrangements for teaching 10 to 15 students are made in each department either in the museum or in the laboratories.
 - [iii] There are no seminar rooms.
 - [iv] The departmental libraries need to be upgraded.
 - [v] There are no research labs in any department.
13. Distribution of beds: Not provided. However, the observations made by the inspection team on visiting the hospital are as under:-
 - (A) OPD:-
 - [i] On the day of inspection, there were not more than 100 patients in the OPD.
 - [ii] There are no display boards showing units & unit-wise distribution of faculty. No teaching designations have been given to doctors. Only the names of the doctors with their degrees are displayed.
 - [B] Wards:-
 1. All hospital wards are in 5 bedded cubicles, each with 1 toilet and bath. Many cubicles had "private ward" written outside the room.
 2. There were no side laboratories, doctors and nurses duty rooms, teaching areas in any of the wards.
 3. There was no display of units & beds.
 4. No teaching designations have been given to the faculty.
 5. The bed occupancy was less than 20% on the day of inspection.
 6. The inspection team met a total of 5 doctors both in the hospital. Almost all doctors were retired service officers whose Army/Air Force experience could not be verified. Most of them were above the age of 65 years.
 7. No Senior & Junior Residents were available in the OPD and Wards. Only one intern was on duty. Very few nurses were seen to be present on duty.
 8. There are only 10 beds in casualty. One casualty Medical Officer & two staff nurses are on 12 hourly rotation duty. Average casualty patients range from 10 to 17 per day.
 9. On an average 3 to 4 major & 5 to 7 minor surgeries are done per day. 20 to 25 deliveries are conducted per month including one caesarian section every 3 to 4 days.
 10. There were 7 OTs, of which 2 were not in use.
 11. There is a Central Sample Collection Centre. On an average, 70 sample are received per day from OPD, emergency and in patients combined.
 12. The radiology department had 2 static (300 mA & 500 mA) 3 mobile units, 2 colour Doppler's & 1 CT Scan. One ultrasound machine is in Obst. & Gynae.
 13. ICU with 8 beds, NICU with 16 beds and PICU with 3 beds is available. There is no ICCU, separate medical and surgical ICU, Obstetrics ICU or Burns ICU.
 14. There was a central paid pharmacy with paid sub-stores on each floor.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council also perused Section 12 (2) & (3) of the I.M.C. Act, 1956 pertaining to Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity, which reads as under:-

.....12(2) "The Council may enter into negotiations with the authority in any country outside India which by the law of such country is entrusted with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications, and in pursuance of any such scheme, the Central Govt. may, by notification in the Official Gazette, amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be

recognized, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

12(3) The Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Second Schedule by direction that an entry be made therein in respect of any medical qualification declaring that it shall be a recognized medical qualification only when granted before a specified date....."

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council also perused the opinion of the Ld. ASG Shri R. Mohan. Para 8 of the opinion reads as under:-

"8.....Sub-section 3 of Section 12, even though does not specifically state about the withdrawal of recognition of medical degrees of foreign countries, it confers power on the Central Government after consultation with the Council, amend the Second Schedule and this amounts to withdrawal. If such a direction to amend the Second Schedule is given, it tantamounts to remove that particular medical qualification from the recognized degrees mentioned in the Second Schedule. Of course, such an amendment can be given only prospectively. The relevant phrases in the last sentence of the sub-section (2) and (3) respectively is worth to mention (i) "after a specified date" (ii) "before a specified date". Under sub-section (2) recognition would take effect after a specified date. For example, if a degree of a foreign country is recognized it would take effect only from the specified date mentioned in the notification. On the other hand, sub-section (3) which contemplates withdrawal of recognition or amendment of recognition would not have retrospective effect. Any degree that has been withdrawn from the Second Schedule would cease to be recognized only from that date. This would give the benefit to the holders of that degree prior to that date.

Section 19 contemplates withdrawal of recognition within the country. It specifies the ground on which such recognition can be withdrawn. Further, it also contains specific provision for the State Government to play its role in regard to the institutions situated in the State and they have to offer their remarks. So, the procedure contemplated in Section 19 would not apply to the provisions contain in Section 12(3).

To sum up in the background of what I had discussed in the preceding paragraphs, I am of the opinion that unless the requirements contained in paragraph six, the application forwarded by a foreign medical institution seeking recognition cannot be entertained. Section 12(3) is also very clear that it relates to withdrawal of recognition or de-recognition as detailed in paragraph eight."

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided to recommend to the Council the withdrawal of recognition granted to Manipal College of Medical Sciences, Pokhara, Nepal for the award of MBBS degree granted by Kathmandu University u/s 12(3) of the I.M.C. Act,1956 and further decided not to grant provisional/final registration u/s 12(2) of the I.M.C. Act,1956 to any student passing from this institute and who has not passed the screening test."

Item No. 33. : Universal College of Medical Sciences Bhairahawa, Nepal

"The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council considered letter dated 19.2.2007 received from the Chairman, Universal College of Medical Sciences Bhairahawa, Nepal stating as under:-

"I received today morning a message from the Dean, UCMS, Nepal that he received telephonic call and fax message from the Council office informing him that an inspection team of the Council is visiting our college in Nepal for an inspection. Previously also an inspection of our college was sought to be conducted on the directions of the Ministry of Health & F.W., Govt. of India. When the Council Inspectors visited our college in the month of January they saw for themselves the disturbed conditions in that part of Nepal due to the prevailing state of unrest. There was a strike going on. We may inform you that even as on date the situation is far from normal. A strike in the region has again been called from 21st to 27th February,2007 (copy of paper cuttings are attached). Therefore, an inspection at this stage is not feasible and will only help in conveying a distorted version.

1. *Notwithstanding what has been submitted above, we are also at a loss to understand as to why the Ministry of Health & FW, Govt. of India, has directed the Council to conduct an inspection of our college at this stage when the Govt. of India by a notification in the Gazette of India had granted our college recognition under the scheme of reciprocity under section 12 of IMC Act,1956 only very recently, i.e. on 23.10.06. To the best of our belief, the Govt. of India would have taken into consideration all the relevant factors, including consultation with the Nepal Medical Council, Govt. of Nepal, the Ministry of External Affairs, Govt. of India and the various*

legal aspects involved therein, before arriving at the decision to grant our College the recognition Under Section 12 of the Act. Therefore, getting one more inspection conducted by the Council so soon after the Govt. of India has granted the necessary recognition does not appear to be legally tanable.

2. *In our view the matters relating to recognition of medical courses under the reciprocity scheme with another sovereign country or conducting of an inspection in a College already recognized under section 12 cannot be dealt with in the same manner as in respect of a College within India. When the initial recognition itself was granted after consultation with the Govt. of Nepal and the Indian Ministry of External Affairs, it does not appear to be proper to force another inspection so soon. It is also doubtful as to whether an inspection can be got conducted without consulting the Ministry of External Affairs, G.O.I., the Govt. of Nepal and the Nepal Medical Council, as ours is a recognized College under the reciprocity scheme. Another issue that needs to be addressed is as to whether the Council could judge our college vis-à-vis the yardstick being adopted by it in respect of the Indian Colleges. This is because we are required to conform to the standards prescribed by the Nepal Medical Council.*
3. *In these circumstances, we appeal to your goodself to call off the proposed inspection of our College for the reasons that the area around the College continues to be disturbed with a strike already announced from 21-27, February, 2007. Further, in our view, such an inspection can be considered again only after the legal issues pointed out above are sorted out. We are also simultaneously taking up the matter with the Ministry of Health & Family Welfare, Govt. of India, for appropriate clarification in this regard."*

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council also observed that the inspection of Universal College of Medical Sciences, Bhairahawa, Nepal was being carried out at the behest of the Central Govt. which had requested the Council to carry out the inspection of the colleges in Nepal vide its letter dated 16.01.2007.

Further the medical college authorities did not co-operate for carrying out the inspection on both the occasions – i.e. 19th & 20th January, 2007 and on 20th & 21st Feb., 2007 under the pretext of law and order problem and therefore, the inspection of the institute by the Council Inspectors could not be carried out.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council and decided to reiterate its earlier decision recommending to the Central Govt. to withdraw the recognition of MBBS degree granted by Tribhuvan University in respect of students being trained at Universal College of Medical Sciences, Bhairahawa, Nepal taken at its meeting held on 02.12.2006 and further decided not to grant provisional/final registration u/s 12(2) of the I.M.C. Act, 1956 to any student passing from this institute and who has not passed the screening test."

It was observed that when in the year 1997, the Council had taken a decision that it would not be in a position to grant registration to candidates coming back from various medical institutions in the erstwhile states of USSR falling in different categories of deficiencies etc., and the candidates concerned, however, had been demanding grant of registration under the Act by claiming – (i) they are citizens of India; (ii) holding recognized medical qualifications – and, therefore, they cannot be declined registration by the Council as they fulfill both the statutory conditions in this behalf.

On the contrary, it was the position of the Council that as a part of statutory obligation, the Council would be obliged to go behind the degrees to see whether the teaching and training in the foreign medical institutions was appropriate enough to permit the candidates to involve themselves in the treatment of the patients in India.

The Hon'ble Delhi High Court in its judgement in the case of Dr. Ardhendu Shekhar Pandey – AIR 1998 Del. 325, held that within the purview of the then unamended Indian Medical Council Act, 1956, i.e. when there was no statutory provision for conduct of screening test and issuance of eligibility certificates – the Council is obliged and empowered to evaluate the teaching and training of the candidates by going behind their degrees and accepted the submission on behalf of the MCI that the grant of registration is not automatic on the fulfillment of the conditions that the candidates are Indian citizens and holding recognized medical qualifications. The relevant portion of the above-mentioned judgement in para-23 and 29 thereof are reproduced as under : -

“.....21. Mr. Mukul Rohtagi, the learned Senior counsel for the petitioner submitted that the medical qualification granted by medical institution outside India which are included in part (ii) of Schedule III shall also be recognised medical qualifications for this Act. He submitted that the petitioner had successfully obtained the ultimate degree from a recognised institution. Respondent No. 1 now cannot be permitted to go behind the degree. This would be contrary to the spirit of Section 13 of the Act. According to Mr. Rohtagi, the Schedule also does not anywhere insist that medical education year by year should be evaluated. What is incorporated in the schedule is that the ultimate degree of the M.D. should be from a recognised institution.....

29. On careful scrutiny, this submission of the learned counsel for the petitioner that the respondent No. 2 cannot go behind the degree cannot be accepted. The medical council while enrolling the new doctors must be permitted to look into their entire educational qualification and if necessary even year-wise education. The true spirit and intention behind this legislation is that the student who is enrolled by the Indian Medical Council should have a good quality of teaching and instructions and for that purpose, respondent No. 1 would be justified even going behind the degree in order to scrutinize and evaluate from which institutions the students had obtained the medical education year after year.....”

In the year 1998, the Hon'ble Supreme Court in its judgement in the case of MCI Vs. State of Karnataka – (1998) 6 SCC 131 – has laid down as under : -

“.....A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.....”

The Ministry of Health, Govt. of India has filed an affidavit dated January 2008 in Writ Petition (C) No. 8352/2007 – Avadesh Ahuja & Ors. Vs. MCI & Ors. wherein the Ministry of Health, Govt. of India has stated that for a candidate possessing the recognized medical qualifications which are included in Schedule-II relatable to Section 12 of the Act, they are not required to qualify in the screening test for seeking the provisional/ permanent registration from the MCI, inasmuch according to the Ministry of Health, Govt. of India the screening test provision is not applicable to the candidates having medical qualifications in relation to Section 12 of the Act.

It was also noted that the case which has been placed by the MCI before the Hon'ble Delhi High Court in the above mentioned Writ Petition © No. 8352/2007 – Avadesh Ahuja & Ors. Vs. MCI & Ors. inter-alia, is as under : -

- (i) Manipal College of Medical Sciences was inspected by the MCI in the year 2000 for the purpose of grant of recognition u/s 12 of the Act for which the application of this institution u/s 12 of the Act had been forwarded by the Ministry of Health, Govt. of India to the MCI. This college stood recognized by a notification dated 26.09.2001 issued by the Ministry of Health, Govt. of India U/S 12(2) of the Act.
- (ii) On 11th / 16th January, 2007 the MCI had sought to carry out the inspection of this college on 19-20 January, 2007. This inspection report had revealed gross deficiencies including in relation to infrastructural, teaching and other facilities, the clinical material and the teaching staff etc.
- (iii) One of the significant fact which came to light was that in the year 2006 this college had been inspected for 100 admissions annually and was recognized for that sanctioned capacity in the year 2001. In this inspection in January 2007 it was found that the college has been making 150 admissions annually as against the capacity of 100 students per annum for which it had been recognized by the MCI. The college authorities declined to furnish the details of the students admitted by them over the period of time. It, therefore, is not

possible to find out from the records available with the MCI as to from which year this college had started making admissions in this medical course over and above the annual capacity of 100 admissions in this college. The inspection report of January 2007 had been considered by the Executive Committee of the Council in its meeting held on 05.02.2007. The decision of the Executive Committee of the Council where the members of the Ad-hoc Committee appointed by the Hon'ble Supreme Court was also present, was communicated to the Ministry of Health, Govt. of India vide MCI's letter dated 23.02.2007 wherein it had been resolved that on account of the deficiencies found in this college, until the matter is finally decided upon the recommendations for withdrawal of recognition, the MCI would not grant provisional / final registration.

- (iv) Thereafter, various attempts had been made for re-inspection of this college but the same was not permitted. This position was again considered by the Executive Committee of the Council in its meeting held on 03.03.2007 where the members of the Ad-hoc Committee appointed by the Hon'ble Supreme Court were also present and the resolution of the Executive Committee taken on 03.03.2007 was communicated to the Ministry of Health, Govt. of India vide MCI's letter dated 21.03.2007. It was resolved by the Executive Committee that the Council has already recommended to the Ministry of Health, Govt. of India to withdraw recognition granted to this college and has further decided to not to grant provisional / final registration to any student passing from this college and who has not passed the screening test. The above-mentioned resolution of the Executive Committee of the Council was also approved by the General Body of the Council in its meeting held on 10.03.2007.
- (v) The office of the Council has reported that after this decision taken by the Executive Committee of the Council on 03.03.2007, no candidate of this college has been granted either provisional or permanent registration pending further decision to be taken in this behalf where the recommendations of the MCI for withdrawal of the recognition of this college, is pending with the Ministry of Health, Govt. of India.
- (vi) These candidates of Manipal College of Medical Sciences had filed the above-mentioned writ petition before the Hon'ble Delhi High Court in the 1st week of November 2007. The above-mentioned position has been placed by the MCI before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court had then required the MCI to respond to the affidavit filed by the Ministry of Health, Govt. of India supporting the demand of the candidates for grant of provisional / permanent registration without passing the screening test.
- (vii) The MCI had thereafter filed another affidavit dated 23.02.2008, inter-alia, submitting the further efforts which had been made by the MCI for the conduct of the inspection of this college which was not permitted and also the reiteration of the recommendation of the MCI to the Ministry of Health, Govt. of India for taking a final decision regarding the withdrawal of recognition of this college. It was also submitted by the MCI that it would not be appropriate for the Ministry of health, Govt. of India to state in its affidavit that these candidates should not be asked to appear in the screening test and that the issue of decision by the Ministry of Health, Govt. of India for de-recognition of the college is not relevant in the present context.
- (viii) The members of the Executive Committee also considered this aspect that the Council was also having the perception as if the provisions of the Screening Test Regulations are applicable to the candidates who secure medical qualifications from institutions abroad which are included in Part-II of the III Schedule relatable to Section 13 of the Act. Even when the office of the Council had such a perception, having regard to its obligations under the Act, it was still permissible and in fact in view of the gross deficiencies in relation to minimum infrastructural, teaching and other facilities at Manipal

College of Medical Sciences, Pokhara & Universal College of Medical Sciences, Bhairahawa, Nepal - obligatory on the part of the Council to take the decision which it had taken on 03.03.2007 that pending the decision by the Ministry of Health, Govt. of India for withdrawal of recognition of these institution u/s 12 of the Act, as recommended by the MCI to not to grant registration and the Council is entirely justified, correct and empowered in insisting that these candidates from this institution should qualify the screening test before being granted registration to practice medicine as medical practitioner under the Act.

(ix) On a further examination of the relevant facts, the provisions of the Act including the amendments carried out in the year 2001, the provisions of the regulations dated 18.02.2002, i.e., Screening Test Regulations and Eligibility Certificate Regulations relatable to Section 13(4A) and 13(4B) of the Act, it is observed that a careful and correct reading of the provisions of the Act and the regulations do stipulate that all the Indian citizens who secure primary medical qualification (MBBS) from any foreign medical institution which is either included in the Schedule-II or included in Part-II of the IIIrd Schedule shall be required to qualify the screening test under the provisions of the Screening Test Regulations.

(x) The only exception which has been made is with regard to the temporary permissions which are granted by the MCI for the purposes of research, medical services for charitable and philanthropic purposes under the provisions of Section-14 of the Act.

(xi) It was further observed that Section 13(4A&B) of the Indian Medical Council Act, 1956 as introduced by the 2001 Amendment of the Indian Medical Council Act, 1956 reads as under : -

“Section 13 (4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualified the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies that said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

(4B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub-section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.”

(xii) The provisions of Section 13(4A) stipulating passing of the screening test is not restricted to the foreign medical qualifications included in the Part-II of the III Schedule and when read in the light of the objects and reasons for the

Amendment Act of 2001 and the scheme of the Act, it emerges that except for the temporary permissions u/s 14, for all other foreign medical qualifications obtained by citizens of India either u/s 12 or u/s 13 of the Act, the candidates would be obliged to qualify in the screening test.

- (xiii) The earlier cases where the issue of non-grant of registration had come up for debate, had pertained to the medical qualifications included in 3rd Schedule of the Act mentioned in Section 13(3) of the Act. Now, for the registration of candidates involved in these two writ petitions, the medical qualifications are included in the 2nd Schedule mentioned in Section 12 of the Act. It was with reference to the candidates in these two writ petitions who have obtained their medical qualifications from medical institutions in Nepal, that the Council was required to have a closer look at the provisions of the Act, from this perspective and in the background of Section 12 of the Act.
- (xiv) The Committee observed that there seems to be a bonafide, however, an erroneous understanding of the requirements of the provisions of the IMC (Amendment) Act, 2001 and the Screening Test Regulations. The requirement of law gets clear on the proper reading and understanding of the above-mentioned statutory position under the Act. It would neither depend on the affidavit(s) of any authority, Govt. of India etc. nor would it be dependent upon the erroneous impression or understanding of any authority including the Council. In any case, the ultimate analysis and interpretation shall be within the exclusive jurisdiction of the Hon'ble Courts requiring the concerned authorities to abide by it.
- (xv) Previous incident of the Govt. of India filing the affidavit was also considered. It was observed that the Screening Test Regulations framed by the MCI u/s 13(4A) of the Act, were prescribed the date of 15.03.2002 by the Ministry of Health, Govt. of India, for bringing into effect the Screening Test Regulations. The validity of the Screening Test Regulations were challenged before the Hon'ble Delhi High Court. By a judgement dated 11.07.2002 delivered by a Id. Division Bench of the Hon'ble Delhi High Court in the case of Dr. Anuradha Saini & Ors. Vs. UOI, the challenge to the Screening Test Regulations had been rejected.
- (xvi) Thereafter, certain other candidates belonging to different batches, had filed writ petitions under Article 32 of the Constitution of India, in the year 2002 itself, before the Hon'ble Supreme Court. One of the pleas which had been raised by these candidates was that as per the Amendment Act of 2001, the date for bringing into effect the Screening Test Regulations, had to be notified by the Ministry of Health, Govt. of India, however, since the notification was issued by the MCI – the Screening Test Regulations have not come into force and they should be granted registration without qualifying in the screening test.
- (xvii) The Ministry of Health, Govt. of India had filed an affidavit in January 2003, disputing the plea of the students and stating that they are obliged to qualify in the screening test. However, when the writ petitions of the candidates were still pending before the Hon'ble Supreme Court for final adjudication, suddenly, the Ministry of Health, Govt. of India on 20.02.2004 filed another affidavit – now stating that the date of 15.03.2002 was not notified by the Ministry of Health, Govt. of India and therefore, now the Ministry of Health, Govt. of India shall issue a notification specifying the date as 15.03.2004 for the enforcement of the Screening Test Regulations and all those candidates who had applied before the date of 15.03.2004 should be considered for grant of registration, as per the provisions of law in position prior to the IMC (Amendment) Act, 2001 i.e. without passing the screening test.
- (xviii) The writ petitions before the Hon'ble Supreme Court were listed for final hearing on 24.02.2004. With reference to the above-mentioned affidavit of Ministry of Health, Govt. of India dated 20.02.2004, the Hon'ble Supreme

Court deferred the final hearing and the MCI was granted an opportunity to place its views on the contents of the affidavit of the Ministry of Health, Govt. of India dated 20.02.2004.

- (xix) Accordingly, by an affidavit dated 31.03.2004, the resolution of the General Body of the Council was placed before the Hon'ble Supreme Court, inter-alia, to the effect that the date of 15.03.2002 for enforcement of the Screening Test Regulations had been decided by the Ministry of Health, Govt. of India and there was sufficient compliance with the requirements of the Amendment Act 2001. It was, therefore, submitted by the General Body of the Council that there was no legal deficiency in enforcement of the Screening Test Regulations dated 15.03.2002 and there would not be any permissibility or justification in seeking to shift the date of enforcement of the Screening Test Regulations from 15.03.2002 to 15.03.2004.
- (xx) It is observed by the Committee that in its final judgement in the case of Sanjeev Gupta & Ors. Vs. UOI & Ors., the Hon'ble Apex Court held that the Screening Test Regulations had come into force from 15.03.2002 and there was sufficient compliance with the provisions of the IMC (Amendment) Act, 2001 and the affidavit dated 20.02.2004 filed by the Ministry of Health, Govt. of India suggesting for shifting of the date of the enforcement of the Screen Test Regulations from 15.03.2002 to 15.03.2004 had not been acceded to by the Hon'ble Supreme Court.
- (xxi) The Committee is of the belief that a bonafide erroneous impression of the correct meaning and interpretation of the above-mentioned provisions of the Act and the regulations made thereunder understood and adopted by the Council – can always be put to an alteration / modification on having, once again, in a bonafide manner, to adopt a different point of view at a later occasion – on account of better understanding on the same subject and when this understanding appears to be more appropriate for appreciating the meaning and applicability of a law for achieving the purposes sought to be achieved.
- (xxii) Thus, on a close look of the language employed in the provisions introduced by the Amendment Act of 2001, it becomes clear that the stipulation with regard to qualifying the screening test have been made applicable to all Indian citizens who secure foreign medical qualification which are included either in Schedule-II or in Schedule-III of the Act.'
- (xxiii) The candidates who have been granted provisional / permanent registration after having had passed out from Manipal College of Medical Sciences are those candidates who have been given the registration only before the decision taken by the Executive Committee on 03.03.2007, i.e. the registration under the Act will be granted to candidates from this college upon qualifying in the screening test. No candidate who has passed-out from this college has been granted registration by the Council after 03.03.2007.

In view of above, the members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council decided that careful reading of Section 13(4A) – i.e. that "A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualified the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies that said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person" makes it clear that it is applicable to all the candidates who are Indian citizens and who have secured a medical qualification from a foreign medical institution and thus it is applicable to all the candidates acquiring a foreign

medical qualification either u/s 12 (Schedule-II) or Section 13 (Schedule-III) of the Indian Medical Council Act,1956.

The members of the Adhoc Committee appointed by the Hon'ble Supreme Court and of the Executive Committee of the Council have further come to the conclusion that while reiterating its recommendations to the Ministry of Health, Govt. of India for withdrawal of recognition of Manipal College of Medical Sciences at Nepal, the office of the Council (Registration & Equivalence Committee) which processes and grants registration – provisional / permanent – to grant provisional/permanent registration to all those candidates who have obtained MBBS qualification from this institution and on completion of the mandatory internship and fulfillment of other conditions, have also passed / qualified in the screening test.

The Committee further directs the office of the Council to place it on record before the Hon'ble Delhi High Court the submissions on behalf of the Council that each of the Indian citizen who secures a medical qualification from a foreign medical institutions which are falling within the purview of Section 12 (Schedule-II), Section-13 (Schedule-III) shall be obliged to qualify the screening test. Upon their qualifying in the screening test, their application for grant of provisional / permanent registration shall be processed by the Council and they shall be granted provisional / permanent registration in accordance with the Act and the regulations made thereunder.

Lt.Col.(Retd.) Dr. A.R.N. Setalvad
Secretary

Kochi, dated the
8th March, 2008

A P P R O V E D

(DR. P.C.KESAVANKUTTY NAYAR)
PRESIDENT (ACTING)