



# INDIAN MEDICAL ASSOCIATION (H.Q.s.)

(Registered under the Societies Act XXI of 1860)  
Mutually Affiliated with the British & Nepal Medical Associations  
I.M.A. House, Indraprastha Marg, New Delhi-110 002



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IMA/HSG/49/778

31-01-2024

To  
Shri Amit Shah Ji  
Honourable Union Minister for Home  
Government of India  
New Delhi.

## **Sub: Executive order on criminal prosecution of doctors**

Respected Sir,

IMA thanks the Government of India for raising awareness on how doctors are being implicated in criminal cases. Medical community is grateful for being exempted from the enhanced punishment for negligence as originally proposed in clause 106 of Bhartiya Nyaya Samhitha. It is also a relief that section 88 of IPC has been retained as Section 26 of Bhartiya Nyaya Samhitha.

Medical professionals are constrained to take a calibrated risk many a time in critical situations. Therefore, it becomes difficult to define gross negligence.

Provided that a RMP to be held guilty of criminal medical negligence, it must be of such a high degree as to be 'gross', supported by expert opinion, otherwise, it may be presumed a medical accident, the reason of which cannot be conclusively determined.'(2005)6SCC1Jacob Mathew Vs. State of Punjab.

In this juncture Indian Medical Association requests your good self to issue a Government order from the Union Home department providing further clarifications on provisions under Section 26 and Section 106 of BNS for the benefit of investigating officers.

1. Whenever a complaint of criminal negligence is taken up by the investigating officer provisions of section 26 of BNS shall take precedence. Provisions of section 106 should be considered only when the officer is satisfied of the recklessness or gross negligence.
2. When the investigating officer is satisfied that section 106 cannot be excluded he may follow the procedures as enunciated by the judgement of the Supreme Court of India Jacob Mathew Vs State of Punjab.

Three documents in this line are submitted for perusal and consideration. The executive order may protect doctors being harassed under criminal law.

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We would be grateful for a favourable directive to the police officers of the country.

Thanking you

Yours sincerely,

Dr. R.V.Asokan  
National President, IMA

Dr. Anilkumar J Nayak  
Honorary Secretary General, IMA

**Annexures :**

1. Draft document prepared by EMRC of NMC
2. Circular memorandum issued by Government of Kerala
3. Circular memorandum issued by Government of Tamilnadu

## **NMC guidelines on Criminal Negligence**

1. The prosecuting/Investigating Agency on receipt or any complaint of which criminal rashness or negligence is an ingredient against medical practitioners under the Indian Medical Council Act, 1956/NMC Act prior to making arrest refer the complaint to district Medical Council Board for its recommendations as regards the merit of the allegation of criminal rashness or negligence, contained in the complaint. The District Medical Board should be in govt. medical college and in district hospital if the district doesn't have a medical college. (The reason being the availability of all the experts with them.) Department of Forensic Medicine and Toxicology in every medical college which can be a node.1 department for such board.
2. The District Medical Board on receipt of such a reference examine the allegation contained therein within two weeks from the date of its receipt and forward its recommendations to the prosecuting investigating Agency.
3. The prosecuting Investigating Agency or Doctors (against whom the complaint is lodged), in case, it is dissatisfied with the recommendations of the district Medical Board may stating the reasons for such dissatisfaction refer the matter to the State Medical Board for its recommendation within a period of two weeks from the receipt of recommendation of the District Medical Board.
4. The State Medical Board should have a pool of specialist from state from each specialty apart from permanent member's appointed by state government. two specialist or the concerned Branch should be included in the board on the day of receipt of the complaint or appeal.
5. The State Medical Board on receipt of any such reference from the prosecuting/investigating Agency would examine the mater within two weeks from the date of Receipt of such reference. The state medical Board shall provide reason for endorsing or rejecting the recommendation of the district medical board.
6. The prosecuting ' Investigating Agency on receipt of recommendation or the district/ state medical board may further proceed in the matter in accordance with law. However, in case arrest of a registered medical practitioner in the employment of state/Central Government is being made, the controlling officers of such medical practitioner would be informed by the prosecuting/ Investigating Agency. Likewise, in case the registered medical practitioner is engaged in private practice, the concerned. state medical council, or in case there is no state medical council in that state/UT, EMRB NMC informed.
7. A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because allegations have been leveled against him.) Unless the alleged negligence is of gross nature and arrest is necessary for inquiry & investigation or for collecting evidence or unless the investigation officers is satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld. Further investigating agency prior to arrest of the doctor in such cases shall place factual position for consideration of concerned superintendent of police/DCP.

**GOVERNMENT OF KERALA**  
Home (SS.B) Department

No. 41801/SSB2/2000/HOME

Thiruvananthapuram  
Dated 17<sup>th</sup> January 2004

**CIRCULAR MEMORANDUM**

**Sub: Cases against Medical Officers-Investigation there of -  
Further Instructions issued**

As per circulars No. 6538/SSB4/87/Home dated 31.10.89, 73231/SSB4/92/Home dated 20.09.93 & 22.09.93 AND No. 41601/SSB3/2000/Home dated 7.12.02 Government have issued instructions in regard to investigation of complaints against Doctors in Government Service, Private Medical practitioner Doctors in Private hospitals for acts on commission or omission in the medical care of patients. The Director General of Police has subsequently requested, Government to exempt the police officials from the panel/Apex Body, constituted as per the above circulars.

Government have examined the whole matter in detail and issue the following further instructions.

1. After registration of any case against Doctors in Government Service, Private medical practitioner or Doctors in Private Hospitals for criminal negligence, the investigating Deputy Superintendent of police will immediately refer the case to an Expert Panel consisting of the following three members.
  - i. The District Medical Officer of Health (Convener)
  - ii. District Government Pleader/Public Prosecutor.
  - iii. Forensic expert from the nearest Medical College, as follows  
Medical College, Thiruvananthapuram – For Thiruvananthapuram and Kollam Districts. Medical College, Alappuzha – For Alappuzha and Ernakulam Districts. Medical College, Kottayam-For Idukki, Kottayam, Pathanamthitta Districts. Medical Collge Thrissur- For Palakkad, Malappuram and Thrissur Districts. Medical College Kozhikode-For Kozhikode and Wayanad Districts. Medical College, Kannur-For Kannur and Kasaragod Districts.

It shall be the duty of the investigating officer to consider the views expressed by the Expert Panel.

2. In case the views of the members of the panel differ, they will immediately refer the issue for the opinion of the Apex Body consisting of the following four members.
  - i. The Director of Health Service (Convenor)
  - ii. The Director of Medical Education
  - iii. The Additional Director of Health Services (Vigilance)
  - iv. The Director General of Prosecution.

The Apex Body can, depending on circumstances get expert opinion from specialists in the Private Sector also. The affected Doctors are also free to approach the Apex Body appeal.

3. The Expert Panel shall submit its views on the incident within a specified period of 30/60 days and this would be taken into account by the Investigating Officer. He will continue further investigation in the light of the decision jointly take by the Panel. It would be open for the investigating officer to seek additional Experts opinion in case he is not satisfied with the views expressed by the Expert Panel or requires additional clarification.
4. The panel/Apex Body should not it any way interfere with or impede the smooth investigation by the Police.

Sd/-

K.K.Vijaya Kumar  
Principal Secretary to Government

Dated, 21.06.2023

**Circular Memorandum**

Sub : Police – Registration of cases against doctors – Proper procedure – Instructions issued - Reg.

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Attention of all officers is invited to the above subject.

2. Instances have come to notice that criminal cases are registered in Police Station u/s 304 (A) IPC - which is culpable homicide not amounting to murder - for negligence against the Medical Practitioners on the complaint of the family members of the deceased or the discharged patients. Such extreme action is unjustified as it causes damage to the reputation of the medical practitioner. It also demoralises the entire health care fraternity, who take care of the health of people.

3. It may be borne in mind that, complications during treatment especially surgery are likely to happen independent of the procedures and in spite of the best efforts taken by the doctors in good faith.

4. The Hon'ble Supreme Court of India and the Hon'ble High Court have issued guidelines time and again in this regard to the effect that the doctors shall be held criminally responsible only if a prima facie case is made out and after getting an expert opinion from a qualified doctor, preferably a Government doctor of adequate qualification and training.

5. Extract of important guidelines of the Hon'ble Supreme Court of India are given hereunder:

- i) A simple lack of care, an error of judgement or an accident, is not proof of negligence on the part of a medical professional.*
- ii) So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence*

- merely because a better alternative course or method of treatment was also available.*
- iii) Simply because a more skilled doctor would not have chosen to follow or resort to that practice of procedure which the accused followed.*
  - iv) It is not possible for every professional to possess the highest level of expertise of skills in that branch which he practices.*
  - v) A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.*
  - vi) Simply because a patient has not favourably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable.*
  - vii) Human body and medical science both are too complex to be easily understood. To hold in favour of existence of negligence, associated with the action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the job and or errors committed by chance, which do not necessarily involve the element of culpability.*
  - viii) The investigating officer and the private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused medical professional amounts to rash or negligent act within the domain of criminal law under section 304-A IPC.*
  - ix) A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.*
  - x) The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an*

*independent and competent medical opinion preferably from a doctor in Government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation..*

- xi) A person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.*
- xii) A mere deviation from normal professional practice is not necessarily evidence of negligence. Let it also be noted that a mere accident is not evidence of negligence. So also an error of judgment on the part of a professional is not negligence per se.*
- xiii) No sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient.*

6. The Government of Tamil Nadu has also issued guidelines to be followed strictly while registering case against the Medical Practitioners, vide G.O.(Ms) No.220 Health and Family Welfare (21) Department, dated, 04.07.2008, which reads as follows :

*"A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigation officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an Independent and competent medical opinion, preferably from a doctor in Government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner, simply because a charge has been levelled against*



*him, unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.”*

7. Therefore, it is reiterated that whenever a complaint of death due to negligence on the part of Medical Practitioners is received, the investigating officers should

- a) Make thorough enquiry and collect all oral and documentary evidences.
- b) Obtain the opinion of another competent Government doctor preferably from the Medical College Hospital.
- c) Obtain Legal opinion if a criminality under 304(A) is made out with the available evidences.
- d) The doctor accused of rashness or negligence, shall not be arrested in a routine manner.
- e) The CoPs and SPs should personally review and weigh the evidences before registration of case.
- f) An express report on registration of cases, facts and circumstances with details of evidence of the case shall be sent to the DGP/HoPF within 24 hours of registration of case.

8. Acknowledge the receipt of the circular memorandum.

Sd/- XXXXXX

Director General of Police/HoPF

Tamil Nadu.

To

All Unit Officers