

To

Mr Subramaniam Swamy
Member Parliament
Ex Union Law Minister
New Delhi

Re; Spate of recent proposed decisions / notifications by UPA 2 Government against medical professionals

Sir,

Medicos Legal Action Group is a trust formed by few doctors to look after interests and welfare of MBBS doctors and take legal action where needed. The trust works to create and spread awareness in the medical profession and the public about medicolegal issues through various means, for removal of quackery, for the diffusion of useful knowledge on matters related to health specially with training and working of medical personnel and to liaison and advocate with Government and its agencies including MCI, MOHFW, State Governments on issues related to MBBS doctors their training, their service matters and overall welfare.

We are concerned that MBBS graduates today are unemployed, underemployed and exploited. There is rampant frustration among them due to lack of opportunities which makes many of them leave Indian shores in search of better life.

We have been following closely developments at MOHFW under the current UPA 2 Government a few of which have deeply disturbed us. These are

- 1) **Notification issued by Dr Vishwas Mehta Joint Secretary, Min Of Health** and Family Welfare Govt of India vide Letter no D.O.No.V.11025/65/2012-MEP.I dt 19-05-2013 to the State Departments of Health and Family Welfare requesting them to amend the Law prevailing in their State relating to registration of practitioners of modern scientific medicine to provide an enabling provision to allow enrolment of ISM professionals in State Medical Register for registration of practitioners of modern medicine as maintained by State Medical Councils. This notification is nothing but official directions to practice quackery and needs to be withdrawn for the following reasons;
 - a. In case of Bhanwar Kanwar vs Dr R K Sharma Honorable Supreme Court has already awarded a sum of Rs 15 Lacs compensation against a Ayush Doctor for prescribing allopathic medicines.
 - b. In case of Poonam Verma vs Dr Ashwin Patel Honorable Supreme Court has categorically considered practice of allopathy by homeopathic doctor being outright negligence.

c. National Consumer Dispute Redressal Commission in case of Prof P N Thakur vs Hans Charitable Hospital has also considered a Ayush Doctor as an unqualified doctor to prescribe allopathic treatment to patients.

d. Indian Medical Council Act has not been amended as yet. Section 15(2)(b), Section 17, subsection (2)(b) of 1970 Act and subsection (3) of section 13 and section 15 of IMC Act provide for registration of only those practitioners holding relevant educational qualifications in modern system of medicine as mentioned in part II of the third schedule (minimum MBBS) to be registered in Medical Registers maintained by Medical Council of India and State Medical Councils. Only such practitioners can practice modern scientific medicine in the country.

e. Also there is the fact that Ayurveda is our country's heritage. When we ask trained ayurvedic doctors to prescribe modern medicine we denigrate our own heritage by acknowledging that ayurveda is not good enough to treat our patients.

f. Govt. should then accept that AYUSH experience in India is a failure as it cannot even manage common medical conditions on their own and need to resort to covert and illegal modern practice for managing these conditions. It must shut down AYUSH department and close/ban all AYUSH institution.

g. The infrastructure of Ayush colleges should be used to start Medical colleges imparting MBBS degree. The stringent requirements of MCI regarding starting a medical college should be lowered to match that needed for a AYUSH college or a BSc (CH) degree imparting district hospital. All existent AYUSH doctors should be given an option either to practice pure AYUSH or to take a 2 yr bridge course to upgrade to MBBS. Then there will be no need for back door entry for ayurvedic doctors into modern scientific system of medicine.

2) Recent news regarding one year compulsory rural service by MBBS doctors before they can apply for postgraduation. This decision / proposal is bad for all concerned.

a. The Government does not have Primary Health Centres with posts for MBBS doctors in sufficient numbers (43000) every year to give guaranteed placement to all MBBS graduates.

b. In absence of these jobs doctors will be left to find for themselves jobs in rural areas and then get certified by local patwari, tehsildar etc to become eligible for PG. This will lead to corruption and will not solve the problem for which this solution is envisaged.

c. Girls outnumber boys in medical colleges today. Given the social norms of the nation this decision will be a deterrent as by the time they get married (usually after they get selected for postgraduation involving minimum one year of dedicated study) they will be more than 26-27 yrs age.

d. In decision of Dr Kamini Singla & Ors vs State of Punjab and ors the honorable Punjab and Haryana high court denied benefit of rural

service to 1100 rural medical officers with more than 5 yrs of bonafied rural service. This means that only those employed by State Medical service like PCMS and posted in rural area will be able to avail the advantage of rural service in PG admissions.

e. The policy to give benefit of additional marks in PG exams was to be implemented only from 2013 (according to Post Graduate Medical Education (Amendment) Regulations , 2010 (part II) vide notification no MCI.18(1)/2010-Med/49070 from academic year 2013-14) hence the question of MBBS doctors not opting for rural service to avail this incentive does not arise as so far this benefit was not notified.

f. There is an argument given of how MBBS student cost 1 cr to the nation but pays pittance (in Govt colleges) hence should pay his debt to society in form of rural service. First we dispute this figure as arbitrary, exaggerated and deliberately inflated. Second Govt gives subsidy for diesel, power, food etc. Does this mean that all taxi drivers who avail the Govt fuel subsidy have to "pay their debt to society" by providing free service to poor, or mandatorily ply the taxi in rural area only. Or should all those who avail subsidized or free power distribute 5 % of their agricultural produce, or manufacturing products to areas of need over and above the various taxes Govt imposes on them. Any 5 star hotel uses a generator running on subsidized diesel and should therefore as part of its social responsibility serve 5% of its total clientele from BPL free of cost.

g. Private colleges charge an arm and a leg for medical education . How then is it justified in the name of social responsibility that an MBBS graduate from a private medical college not availing any government subsidy be forced to do rural service, probably free of cost and then pay the local tehsildar / patwari for a certificate of completion of rural service.

h. Fresh MBBS graduates even after internship have limited knowledge of practice of medicine. They need years of supervised working before they are competent to independently treat patients. General practice or primary healthcare of the kind needed to be practiced in rural areas without investigations and other facilities is tougher than practice of a limited speciality in a supervised hospital environment. Releasing fresh MBBS graduates against their will on rural population unsupervised can have disastrous consequences. This proposal simply demonstrates how low a priority health is given by our government.

3) BSc Community health has been given nod by the cabinet;

a) There is no dispute on the fact that rural health care in India is abyssimal and drastic steps are needed to rectify the same. There is also no doubt that this involves a multi pronged approach. A Community health worker (anganwadi worker, Multipurpose health worker), a nurse

practitioner, a pharmacist and a doctor available along with infrastructure, medicine supply with improved connectivity (roads) electricity, safe water supply are all prerequisites to improved rural healthcare. At different times in different states different schemes have been launched whereby the community health workers named differently in different states form the first line of community healthcare. Never however has an attempt been made to replace a doctor with a community health worker as is being done now under garb of BSc Community Health.

b) The fact of the matter being that though on paper we have rural dispensaries in every nook and corner of the state they fail to provide healthcare to our rural populace. The reasons are not far to seek. The buildings are in shambles with no resemblance of a hygienic healthcare facility as required under Clinical Establishment Act. Rickety chairs and tables serve as infrastructure and even these are missing or broken. Electricity is mostly not available due to cuts. There are no facilities of generator (How vaccination programs are run without cold chain is shrouded in mystery). Without proper autoclaving no procedures or surgeries are feasible in these dispensaries. Water supply even in dispensaries is from a hand pump if at all. Few of the dispensaries are approachable only by horse drawn vehicles as buses do not travel to them.

c) Given the futile exercise of marking attendance in such dispensaries it is surprising that employees whether doctors, nurses or pharmacists come to work at all. This is a vicious cycle. Patients stop coming to these dispensaries as on previous visits their need at the time was not fulfilled whether because the doctor is absent, or medicine not available, or procedure cannot be done due to power cut etc. They then approach quacks, who thrive in this environment, for their daily medical needs. Also disease does not seek to afflict a person only during office hours. To tackle patients in off duty hours appropriate residential arrangements for staff are sorely lacking.

d) In Delhi High Court and Supreme Court, shortage of doctors in the country has been touted as a major problem. Government has shown statistics that India has 1 doctor for 1700 population. What has been glossed over in this statistics is that this figure is taken from MCI which concerns only with MBBS doctors. Are the doctors from alternate system of medicine not doctors. BAMS, BHMS, and BUMS graduates all have 4½ yrs study of their systems of medicine including basic subjects like anatomy physiology.

Their number is anyway more than that of MBBS doctors. If we include them in the statistics the ratio of doctor to patient in the country will be much less than 1 per 1000 recommended by WHO. Either we consider them doctors or we do not consider them doctors for the statistical purposes. Even these doctors with 4-5 yrs of graduate study are labeled as quacks by honourable Supreme Court if they dabble in modern medicine (Poonam Verma vs Dr Ashwin Patel). How then can a truncated study duration of 3 yrs equip someone with knowledge sufficient to practice modern medicine.

e) There is also the fact that for government health services in nearly all states there are many more MBBS applicants than seats available. All doctors in Government service have to do mandatory 3-5 yrs rural service as per different state norms. Punjab Govt managed to rope in about 1200 MBBS doctors to serve in rural areas on adhoc basis on consolidated salary of 30000 out of which they were also supposed to pay salary of two employees. These doctors were not given any service benefits and were appointed under Zila Parishads. "Shortage of doctors" or that "MBBS doctors do not work in villages" is then a myth created by the powers that be to further their own ends. With unemployment and underemployment existent among MBBS doctors where is the need for a special cadre of rural doctors ?.

f) The reason why the Government is keen on BSc Community Health and of permitting them to practice modern medicine is to be seen in a different context. Medical education has shifted from Govt medical colleges to private medical colleges in large numbers. Most private medical colleges are run by politicians close to ruling party or their relatives and henchmen. Lot of money is involved in medical education with an MD seat being sold for 2 crores and even BSc nursing and BAMS courses fetching good premiums for these colleges. This put a lot of pressure on the management of these colleges (politicians) to get more seats and medical colleges approved from MCI. Resistance to the same has cost MCI dearly. It has been disbanded, adhocism prevails in appointment and removal of Board of Governors. The entire sequence bears a close scrutiny by an independent agency preferably the CBI. If one member Dr Ketan Desai was corrupt (not convicted) how does it justify dissolution of an autonomous body with elected members. By the same argument Corruption of Mr Raja and Mr Kalmadi should have lead to dissolution of the parliament.

g) BSc Community Health is simply another way of selling medical seats without interference by MCI. This would be possible only if the powers that be are able to get some legal sanctity to the BSc CH graduates practicing modern medicine. It was rightly pointed out by professional medical associations and legal luminaries that involvement of MCI will need changes to be made in Indian Medical Council Act. Govt has now cornered National Board of Examination a body which so far concerned with governing post graduate medical courses Diplomate of National Board (Recognized post graduate teaching qualification even in Medical Colleges) to now award alternate of MBBS ie BSc community Health degree.

h) Doing something new which would be marketable even if it is recycled goods has been the cornerstone of political gimmicks perpetrated in our country by our esteemed Government. General elections being near there is a political compulsion for Government to have in its agenda schemes which can be touted to voters as accomplishments. That it maybe illegal or harmful for nations health is inconsequential to this breed

of politicians and they are willing to tweak the law to meet their desired goals. There is no magic wand to improve healthcare in rural areas. Posting a doctor in a rural dispensary of today with his hands tied for want of infrastructure, medicines and equipment is akin to hanging a photograph of a doctor in the dispensary. It serves no purpose except on paper. Because qualified doctors are demanding these facilities it is now prudent to replace them with hopefully a more pliable army of qualified quacks in form of BSc Community Health graduates (Rural Doctors). Plus there is money to be made in starting these new courses for rural doctors

4) **Amendment in Consumer Protection Act** has been petitioned to current UPA 2 without any response. In its current form CPA is harming interests of doctors and patients alike.

CPA was brought with noble intentions of safeguarding the interests of consumers. Traders selling defective TV sets, Insurance companies not paying their customers their due, traders and other service providers were envisaged as targets under CPA. The issue of medical services also being covered under CPA was finally settled in judgment of V P Shanta & Ors vs Indian Medical Association in 1995 by honourable SC. Even at this time only outright cases of negligence like amputation of wrong limb were decided to be covered under CPA. Cases which required expert opinion and evidence were to be referred to civil courts. Advocates, architects and other professionals were similarly covered under definition of service providers as defined in CPA. Thereafter advocates have obtained a stay from honourable Supreme Court in 2009 on their inclusion under CPA as service providers. Doctors meanwhile are being dragged deeper and deeper into the quagmire of CPA even in cases where complicated technical issues requiring expert opinions even via video conferencing are concerned.

Anomalies as perceived by doctors which exist in CPA are

a) In 2002 amendment to the Act claims of upto 20 lac were included in powers of District forum and beyond 1 crore in National Commission. Negligible number of non-medical service provider / traders have so far had claims above 20 lacs filed in consumer courts. Nearly all these cases above 20 lacs are against doctors. An acceptance by our lawmakers that yes doctors can and will be sued for compensation in crores is evident in 2002 amendment.

b) To date there is no cap on what compensation can be claimed under CPA. If Dhirubhai Ambani's doctors had been sued after he died and a claim of 20000 crore was filed, though sounds absurd but legally there is no bar on such astronomical sums being claimed even though the sum maybe equal to the GDP of some nations. Recently honourable has awarded 6.08 crore with interest totaling nearly 12 crore.

c) Under Motor Accident Claims a Maruti 800 is insured for say 3500 Rs premium. If Dhirubhai Ambani had died because of negligence of the driver of this maruti, even though claim under MACT because it would be calculated as per persons income maybe be 2000

crore, the insurance company is bound to pay whatever is awarded even though premium paid by the driver is fixed Rs 3500.

When we compare this with Professional Indemnity insurance of doctors; premium for cover of 10 lacs is 2500, cover of 1 crore is 25000 and for a cover of 2000 crore would be $25000 \times 2000 = 50,00,000$ per annum. If a doctor takes professional indemnity insurance of 2000 crore and pays this premium because he may one day be forced to treat someone like Mr Dhirubhai Ambani his consultation fee needs to be at least Rs 20000 per consultation.

d) Since compensation is awarded as per earning capacity of the patient, In resource crunch situation a doctor will be forced to provide ventilator, surgery and other medical treatment to the rich since if the rich dies the doctor will need to pay enormous compensation as compared to if the poor man's death. This is violative of Article 21 and 14 of the constitution. Is medical treatment going to be only for the rich. Can poor be allowed to die because of sword of hefty compensation hanging over a doctors head.

e) While there is no bar on the amount of compensation which can be claimed under CPA (Maximum consumer Court fee is Rs 5000 whether the claim is for 1 cr or 20000 cr), there is a limit of Rs 10000 fine which can be awarded against the complainant for a frivolous complaint.

f) Doctor's actions are always done in good faith but there is no protection under law given to them as is given to other professions like judiciary and to quasi judicial bodies. A bad decision by a doctor makes him accountable and liable to pay damages, but a bad decision severely criticized by a higher court in appeal does not impose any penalty on the lower court/fora. A bad decision of a court equally causes financial loss, physical and emotional distress to the party concerned. Doctors specially tend to work long and hard to develop a reputation and a single adverse judgment lapped up in the yellow press and prominently reported in headlines destroys the reputation built over decades. Even if after 10 yrs the decision is reversed the irreparable loss which has occurred to the doctor is not compensated.

5) Government has repeatedly done injustice to doctors by equating them with all kinds of commercial and institutional establishments by its agencies. They are charged commercial , non residential, institutional rates for water, electricity, property tax.

This is done even when doctors are earning their livelihood professionally in part of their residential premissis. Chandigarh Administration and Municipal Corporation consider a doctors clinic in the same category as a petrol pump, a coal depot, cinema houses, clubs godowns and baraat ghars and charges property tax from them on commercial rates. Sir you would be aware that professional activity is an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction therefore between a professional activity and an activity of a

commercial character and unless the profession carried on by user also partakes of the character of a commercial nature he cannot be billed on commercial rates. This is despite the fact that there are innumerable judgments including those from Delhi High Court, Bombay High Court and Honourable Supreme court which clarify the issue that doctors working in part of their residential premises are not doing commercial activity. Also commercial charges are not levied in case of other professionals like advocates.

There are many more issues in which we would like your intervention however we are focusing on these issues as being most harmful for medical profession, medical education and health of nation. Kindly reconsider these decisions / notifications at the earliest to prevent definite unfortunate consequences.

Yours sincerely
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Convener
Medicos Legal Action Group

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