

# GUIDELINES ON MEDICAL NEGLIGENCE UNDER CONSIDERATION, SAYS UNION HEALTH MINISTRY

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According to legal and medical experts, a proper statutory framework will not only protect the interests of patients but also check cases of violence against doctors. Illustration: Satheesh Vellinezhi.

The Union Ministry of Health and Family Welfare has taken up for consideration the healthcare sector's long-standing demand to frame guidelines for determining medical negligence cases, a reply to a Right to Information (RTI) query revealed.

Though there is no guideline at present, the matter is under consideration, the Ministry said in response to an application filed under the RTI Act on behalf of *PTI*.

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"So far, no guidelines have been framed. It is under consideration," said Sunil Kumar Gupta, Under Secretary in the Ministry's medical education policy section.

Mr. Gupta, who is also the Central Public Information Officer, gave a written response to *PTI* when asked to provide information on "if the Union Health Ministry has framed any guidelines to handle cases of medical negligence in the country".

It has been more than 17 years since the Supreme Court, for the first time in the Jacob Mathew case in 2005, directed the Centre to frame statutory rules in consultation with the then medical education regulator Medical Council of India (MCI) to deal with medical negligence cases as it impacts both doctors and patients.

While patients have to run from pillar to post to get justice against erring doctors, frivolous allegations and malicious proceedings cause harassment to medical practitioners. According to legal and medical experts, a proper statutory framework will not only protect the interests of patients but also check cases of violence against doctors.

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As a stopgap arrangement, the apex court had framed certain guidelines, according to which the investigating officer should, before proceeding against a doctor accused of a rash or negligent

act or omission, obtain an independent and competent medical opinion.

The opinion should preferably be from a doctor in government service and qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion, according to the guidelines.

“Unfortunately, this direction hasn’t been complied with. Investigating officers don’t know whom to approach, so they get in touch with the state medical councils.

“This leads to court cases as aggrieved patients feel that getting an opinion from the state medical councils amounts to conflict of interest,” said Ajay Kumar Agarwal, a Delhi High Court lawyer who deals with medical negligence cases.

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Medical experts also rued the delay and said it shows apathy on the part of governments.

The MCI passed a resolution for the first time on October 31, 2017, proposing to the government to constitute medical boards with doctors specialising in respective fields of medicine.

When the National Medical Commission (NMC) replaced the MCI, it again wrote to the Union Health Ministry on September 29, 2021, suggesting the constitution, terms of members and functioning of such medical boards at district and state levels.

“The prosecuting/investigating agency on receipt of the recommendation of the District/State medical board may further proceed in the matter in accordance with law,” the NMC said in its communication.

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Prof. Dr. J.A. Jayalal, former national president of the Indian Medical Association (IMA) and current Commonwealth Medical Association secretary, said the IMA made several requests — first to the MCI and then to the NMC — after the Supreme Court judgment.

“Health is given the least priority by the government. A case was filed in Madras High Court seeking direction for the medical regulator to take it on priority and the court directed the regulator to do it but still the works are in the preliminary stage,” Mr. Jayalal said.

“The IMA stands for requesting the government to establish a separate medical tribunal comprising learned doctors to deal with such cases in a time-bound manner. It also demands that the Government of India should proactively come forward to frame these guidelines, in discussion with the NMC and other medical statutory bodies,” he added.

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