

Clinical Aspect to Admit a Patient Under MBBS Doctors and Specialist

KK AGGARWAL*, IRA GUPTA

Question No. 1: Can a general MBBS doctor admit patients under his/her self?

Answer No. 1:

Yes, a general MBBS doctor can admit patient under his/her self.

The provisions of Section 15 of the Indian Medical Council Act, 1956 deals with right of persons possessing qualifications in the schedules to be enrolled which is reproduced hereunder:

“(15) (1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register:

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practice medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872 on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.”

Also, the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 enumerates the

duties and responsibilities of Physician in general. The provisions of Regulation 1 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 are reproduced hereunder:

“B. Duties and responsibilities of the Physician in general:

1.1: Character of Physician (Doctors with qualification of MBBS or MBBS with post graduate degree/diploma or with equivalent qualification in any medical discipline):

1.1.1 A physician shall uphold the dignity and honour of his profession.

1.1.2 The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Who-so-ever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life.

1.1.3 No person other than a doctor having qualification recognised by Medical Council of India and registered with Medical Council of India/State Medical Council (s) is allowed to practice Modern System of Medicine or Surgery. A person obtaining qualification in any other system of Medicine is not allowed to practice Modern System of Medicine in any form.

1.3: Maintenance of medical records:

1.3.1 Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.

1.3.2 If any request is made for medical records either by the patients/authorised attendant or legal authorities involved, the same may be duly

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acknowledged and documents shall be issued within the period of 72 hours.

1.3.3 *A Registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical certificate he/she shall always enter the identification marks of the patient and keep a copy of the certificate. He/She shall not omit to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.*

1.3.4 *Efforts shall be made to computerize medical records for quick retrieval.*

Further, as per the Schedules of Indian Medical Council Act, 1956 the qualification in MBBS is a recognized qualification and the person who undertakes the MBBS qualification is entitled to be registered as registered medical practitioner practicing modern system of medicine as per the provisions of Indian Medical Council Act, 1956. Further, the provisions of Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 enumerates the code of ethics to be observed by physician who is a doctor with qualification of MBBS or MBBS with post graduate degree/diploma or with equivalent qualification in any medical discipline. Thus, once a person has obtained a degree in MBBS and is registered under the Indian Medical Council Act, 1956, then he/she is entitled to practice the modern system of medicine.

Also, as per the provisions of Section 15 of the Indian Medical Council Act, 1956 the registered medical practitioner has a right to sign, issue and authenticate medical or fitness certificate or other certificates to his/her patient.

Also, as per the provisions of Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002, the physician is required to maintain the medical records of his/her indoor patients. The indoor patients are those patients who have been admitted by the physician for treatment.

Hence, a patient can be admitted under the physician who is a qualified MBBS doctor and who has been registered with the Indian Medical Council or any State Medical Council for treatment of the patient as admission of a patient is essential for treatment of the patient which is the paramount duty of the registered medical practitioner.

As per the provisions of Regulation 1.4.2 of Indian Medical Council (Professional Conduct, Etiquette &

Ethics) Regulation, 2002, the physician shall display as suffix to their names only recognized medical degrees or such certificates/diplomas and memberships/honours which confer professional knowledge or recognizes any exemplary qualifications/achievements. Thus, the MBBS cannot claim himself specialist.

Further, in the matter titled as "Surinder Kumar (Laddi) versus Dr. Santosh Menon & Others, 2000 (III) CPJ 517 (Punj. SCDRC)", the Hon'ble Punjab State Consumer Disputes Redressal Commission held that MBBS doctor having obtained degree from the University was competent to practice medicines, surgery and obstetrics. Caesarean operation is a part of surgery. It may be that the persons obtaining diploma like D.G.O may be more qualified to conduct Caesarean operation but it cannot be said that such persons who had obtained such training only were eligible to conduct Caesarean operation. Further, doctor was qualified as well as eligible for conducting Caesarean operation, on the basis of her experience also.

Thus, in view of the above, it is opined that the MBBS doctor can admit patients.

Question No. 2: If a patient is admitted under MBBS doctor and having specific complains in that case is it acceptable?

Answer No. 2:

If a patient is admitted under MBBS doctor and having specific complaint, the MBBS doctor should refer the patient to the specialist or any other physician for consultation and treatment. The MBBS doctor cannot practice which is detrimental to his/her patient. Also, in case of serious illness or in doubtful or difficult condition, it is duty of the MBBS doctor to consult the specialist.

The Chapter 2 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 deals with the duties of the physician to their patients.

As per the provisions of Regulation 2.1.1, the physician can advise the patient to seek another physician's advise. Also, if a patient is suffering from any ailment which is not within the range of the physician, then the physician can refuse to treat the patient and refer the patient to another physician.

Further, as per the provisions of Regulation 2.1.2 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002, the physician having any incapacity which is detrimental to his/her patient is not entitled to practice.

The provisions of which are reproduced hereunder:

“CHAPTER 2

2. DUTIES OF PHYSICIANS TO THEIR PATIENTS

2.1 Obligations to the Sick

2.1.1 *Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavour to add to the comfort of the sick by making his visits at the hour indicated to the patients. A physician advising a patient to seek service of another physician is acceptable, however, in case of emergency a physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient. However for good reason, when a patient is suffering from an ailment which is not within the range of experience of the treating physician, the physician may refuse treatment and refer the patient to another physician.*

2.1.2 *Medical practitioner having any incapacity detrimental to the patient or which can affect his performance vis-à-vis the patient is not permitted to practice his profession.”*

Further, as per the provisions of the Chapter 3 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 deals with the duties of the physician in consultation.

As per the provisions of Regulation 3.1.1 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002, it is the duty of the physician to request consultation in case of serious illness and in doubtful or difficult conditions.

“CHAPTER 3

3. DUTIES OF PHYSICIAN IN CONSULTATION

3.1 Unnecessary consultations should be avoided:

3.1.1 *However in case of serious illness and in doubtful or difficult conditions, the physician should request consultation, but under any circumstances such consultation should be justifiable and in the interest of the patient only and not for any other consideration.”*

In the matter titled as “Martin F D’Souza versus Mohd. Ishfaq, Civil Appeal 3541/2002 vide judgement dated

17.2.2009”, the Hon’ble Supreme Court of India has held that:

“54.....Precautions which Doctor/Hospitals/Nursing Homes should take:

(a) *Current practices, infrastructure, paramedical and other staff, hygiene and sterility should be observed strictly. Thus, in Sarwat Ali Khan vs. Prof. R. Gogi and others Original Petition No.181 of 1997, decided on 18.7.2007 by the National Consumer Commission, the facts were that out of 52 cataract operations performed between 26th and 28th September, 1995 in an eye hospital 14 persons lost their vision in the operated eye. An enquiry revealed that in the Operation Theatre two autoclaves were not working properly. This equipment is absolutely necessary to carry out sterilization of instruments, cotton, pads, linen, etc., and the damage occurred because of its absence in working condition. The doctors were held liable.*

(b) *No prescription should ordinarily be given without actual examination. The tendency to give prescription over the telephone, except in an acute emergency, should be avoided.*

(c) *A doctor should not merely go by the version of the patient regarding his symptoms, but should also make his own analysis including tests and investigations where necessary.*

(d) *A doctor should not experiment unless necessary and even then he should ordinarily get a written consent from the patient.*

(e) *An expert should be consulted in case of any doubt. Thus, in Smt. Indrani Bhattacharjee, Original Petition No. 233 of 1996 decided by the National Consumer Commission on 9.8.2007, the patient was diagnosed as having ‘Mild Lateral Wall Ischemia’. The doctor prescribed medicine for gastroenteritis, but he expired. It was held that the doctor was negligent as he should have advised consulting a Cardiologist in writing.*

(f) *Full record of the diagnosis, treatment, etc. should be maintained.”*

Question No. 3: As above condition is same (If a patient is admitted under MBBS doctor and having specific complains) but Specialist visits are done 1 or 2 times now in this scenario can treatment is carry on by MBBS doctors (but specialist is not looking or taking round for patient in regular manner)?

Answer No. 3:

Yes, the treatment can be carried on by MBBS doctor, even if the specialist visits the patient 1 or 2 times. Further, as per the provisions of Regulation 3.6 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulation, 2002, it is the duty of the physician to prepare a case summary of the patient while referring the patient to the specialist and then the specialist should communicate his opinion in writing to the attending physician. The relevant provisions of Regulation 3.6 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 are reproduced hereunder:

"CHAPTER 3

3. DUTIES OF PHYSICIAN IN CONSULTATION

3.6 Patients Referred to Specialists: *When a patient is referred to a specialist by the attending physician, a case summary of the patient should be given to the specialist, who should communicate his opinion in writing to the attending physician."*

Further, there are certain responsibilities of the physician towards each other which are enumerated in Chapter 4 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 which are reproduced hereunder:

"CHAPTER 4

4. RESPONSIBILITIES OF PHYSICIANS TO EACH OTHER

4.1 Dependence of Physicians on each other: *A physician should consider it as a pleasure and privilege to render gratuitous service to all physicians and their immediate family dependants.*

4.2 Conduct in consultation: *In consultations, no insincerity, rivalry or envy should be indulged in. All due respect should be observed towards the physician in-charge of the case and no statement or remark be made, which would impair the confidence reposed in him. For this purpose, no discussion should be carried on in the presence of the patient or his representatives.*

4.3 Consultant not to take charge of the case: *When a physician has been called for consultation, the Consultant should normally not take charge of the case, especially on the solicitation of the patient or friends. The Consultant shall not criticize the referring physician. He/she shall discuss the diagnosis treatment plan with the referring physician.*

4.4 Appointment of Substitute: *Whenever a physician requests another physician to attend his patients during*

his temporary absence from his practice, professional courtesy requires the acceptance of such appointment only when he has the capacity to discharge the additional responsibility along with his/her other duties. The physician acting under such an appointment should give the utmost consideration to the interests and reputation of the absent physician and all such patients should be restored to the care of the latter upon his/her return.

4.5 Visiting another Physician's Case: *When it becomes the duty of a physician occupying an official position to see and report upon an illness or injury, he should communicate to the physician in attendance so as to give him an option of being present. The medical officer/physician occupying an official position should avoid remarks upon the diagnosis or the treatment that has been adopted."*

Question No. 4: If a patient is admitted under MBBS doctor, so what are the limitations and scope of treatment which are ok or acceptable for MBBS doctor?

Answer No. 4:

The MBBS doctor has to provide treatment to his patient and to practice medical professions as per the Code of Ethics as enshrined in Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 and also as per the provisions of Indian Medical Council Act, 1956.

The Chapter 2 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 enumerates the provisions relating to the duties of the physician towards their patients which are reproduced hereunder:

"CHAPTER 2

2. DUTIES OF PHYSICIANS TO THEIR PATIENTS

2.1 Obligations to the Sick

2.1.1 *Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavour to add to the comfort of the sick by making his visits at the hour indicated to the patients. A physician advising a patient to seek service of another physician is acceptable,*

however, in case of emergency a physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient. However for good reason, when a patient is suffering from an ailment which is not within the range of experience of the treating physician, the physician may refuse treatment and refer the patient to another physician.

2.1.2 Medical practitioner having any incapacity detrimental to the patient or which can affect his performance vis-à-vis the patient is not permitted to practice his profession.

2.2 Patience, Delicacy and Secrecy: Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the State. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidence as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would wish another to act toward one of his own family in like circumstances.

2.3 Prognosis: The physician should neither exaggerate nor minimize the gravity of a patient's condition. He should ensure himself that the patient, his relatives or his responsible friends have such knowledge of the patient's condition as will serve the best interests of the patient and the family.

2.4 The Patient must not be neglected: A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care.

2.5 Engagement for an Obstetric case: When a physician who has been engaged to attend an obstetric case is absent and another is sent for and delivery accomplished, the acting physician is entitled to his professional fees, but should secure the patient's consent to resign on the arrival of the physician engaged."

Also, the Chapter 3 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 enumerates the provisions relating to the duties

of the physician in consultation towards their patients which are reproduced hereunder:

"CHAPTER 3

3. DUTIES OF PHYSICIAN IN CONSULTATION

3.1 Unnecessary consultations should be avoided:

3.1.1 However in case of serious illness and in doubtful or difficult conditions, the physician should request consultation, but under any circumstances such consultation should be justifiable and in the interest of the patient only and not for any other consideration.

3.1.2 Consulting pathologists/radiologists or asking for any other diagnostic Lab investigation should be done judiciously and not in a routine manner.

3.2 Consultation for Patient's Benefit: In every consultation, the benefit to the patient is of foremost importance. All physicians engaged in the case should be frank with the patient and his attendants.

3.3 Punctuality in Consultation: Utmost punctuality should be observed by a physician in making themselves available for consultations.

3.4 Statement to Patient after Consultation:

3.4.1 All statements to the patient or his representatives should take place in the presence of the consulting physicians, except as otherwise agreed. The disclosure of the opinion to the patient or his relatives or friends shall rest with the medical attendant.

3.4.2 Differences of opinion should not be divulged unnecessarily but when there is irreconcilable difference of opinion the circumstances should be frankly and impartially explained to the patient or his relatives or friends. It would be opened to them to seek further advice as they so desire.

3.5 Treatment after Consultation: No decision should restrain the attending physician from making such subsequent variations in the treatment if any unexpected change occurs, but at the next consultation, reasons for the variations should be discussed/explained. The same privilege, with its obligations, belongs to the consultant when sent for in an emergency during the absence of attending physician. The attending physician may prescribe medicine at any time for the patient, whereas the consultant may prescribe only in case of emergency or as an expert when called for.

3.6 Patients Referred to Specialists: When a patient is referred to a specialist by the attending physician, a case summary of the patient should be given to the specialist, who should communicate his opinion in writing to the attending physician.

3.7 Fees and other charges:

3.7.1 A physician shall clearly display his fees and other charges on the board of his chamber and/or the hospitals he is visiting. Prescription should also make clear if the Physician himself dispensed any medicine.

3.7.2 A physician shall write his name and designation in full along with registration particulars in his prescription letterhead.

Note: In Government hospital where the patient-load is heavy, the name of the prescribing doctor must be written below his/her signature."

In the matter titled as "P. B. Desai versus State of Maharashtra, AIR 2014 SC 795", the Hon'ble Supreme Court of India has held that:

"(1) The Doctor-Patient relationship

36. Since ancient times, certain duties and responsibilities have been cast on persons who adopt the sacred profession as exemplified by Charak's Oath (1000 BC) and the Hippocratic Oath (460 BC).

37. It is the responsibilities that emerge from the doctor-patient relationship that forms the cornerstone of the legal implications emerging from medical practice. The existence of a doctor-patient relationship presupposes any obligations and consequent liability of the doctor to the patient.

38. It was Talcott Parsons, a social scientist, who first theorized the doctor-patient relationship. He worked on the hypothesis that illness was a form of dysfunctional deviance that required re-integration with social organism. Maintaining the social order required the development of a legitimized sick role to control this deviance, and make illness a transitional state back to normal role performance. In this process, the physician, who has mastered a body of technical knowledge, on a functional role to control the deviance of sick persons who was to be guided by an egalitarian universalism rather than a personalized particularism. While this basic notion has remained robust, over a period of time there have been numerous qualifications to the theory of Parsons. For instance, physicians and the public consider some illnesses to be the responsibility of the ill, such as lung cancer, AIDS and obesity.

39. It is not necessary for us to divulge this theoretical approach to the doctor-patient relationship, as that may be based on model foundation. Fact remains that when a physician agrees to attend a patient, there is an unwritten contract between the two. The patient entrusts himself to the doctor and that doctor agrees to do his best, at all times,

for the patient. Such doctor-patient contract is almost always an implied contract, except when written informed consent is obtained. While a doctor cannot be forced to treat any person, he/she has certain responsibilities for those whom he/she accepts as patients. Some of these responsibilities may be recapitulated, in brief:

- (a) to continue to treat, except under certain circumstances when doctor can abandon his patient;
- (b) to take reasonable care of his patient;
- (c) to exhibit reasonable skill: The degree of skill a doctor undertakes is the average degree of skill possessed by his professional brethren of the same standing as himself. The best form of treatment may differ when different choices are available. There is an implied contract between the doctor and patient where the patient is told, in effect, "Medicine is not an exact science. I shall use my experience and best judgment and you take the risk that I may be wrong. I guarantee nothing."
- (d) Not to undertake any procedure beyond his control: This depends on his qualifications, special training and experience. The doctor must always ensure that he is reasonably skilled before undertaking any special procedure/treating a complicated case.
- (e) Professional secrets: A doctor is under a moral and legal obligation not to divulge the information/knowledge which he comes to learn in confidence from his patient and such a communication is privileged communication.

Conclusion: The formation of a doctor-patient relationship is integral to the formation of a legal relationship and consequent rights and duties, forming the basis of liability of a medical practitioner. Due to the very nature of the medical profession, the degree of responsibility on the practitioner is higher than that of any other service provider. The concept of a doctor - patient relationship forms the foundation of legal obligations between the doctor and the patient.

In the present case, as already held above, doctor-patient relationship stood established, contractually, between the patient and the appellant.

(2) Duty of Care which a doctor owes towards his patient.

40. Once, it is found that there is 'duty to treat' there would be a corresponding 'duty to take care' upon the doctor qua/his patient. In certain context, the duty acquires ethical character and in certain other situations, a legal character. Whenever the principle of 'duty to

take care' is founded on a contractual relationship, it acquires a legal character. Contextually speaking, legal 'duty to treat' may arise in a contractual relationship or governmental hospital or hospital located in a public sector undertaking. Ethical 'duty to treat' on the part of doctors is clearly covered by Code of Medical Ethics, 1972. Clause 10 of this Code deals with 'Obligation to the Sick' and Clause 13 cast obligation on the part of the doctors with the captioned "Patient must not be neglected". Whenever there is a breach of the aforesaid Code, the aggrieved patient or the party can file a petition before relevant Disciplinary Committee constituted by the concerned State Medical Council."

Question No. 5: What are the criteria or situation in which patients can/should transfer from admission under MBBS doctor to admission under Specialist?

Answer No. 5:

If a patient is admitted under MBBS doctor and having specific complaint, the MBBS doctor should refer the patient to the specialist or any other physician for consultation and treatment. The MBBS doctor cannot practice which is detrimental to his/her patient. Also, in case of serious illness or in doubtful or difficult condition, it is duty of the MBBS doctor to consult the specialist.

The Chapter 2 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 deals with the duties of the physician to their patients.

As per the provisions of Regulation 2.1.1, the physician can advise the patient to seek another physician's advise. Also, if a patient is suffering from any ailment which is not within the range of the physician, then the physician can refuse to treat the patient and refer the patient to another physician.

Further, as per the provisions of Regulation 2.1.2 of the Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002, the physician having any incapacity which is detrimental to his/her patient is not entitled to practice.

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Question No. 6: If patient is admitted under MBBS doctor and having specific complains but not seen by specialist and happens anything wrong – is it the part of medical negligence? and what are the legal actions can take against Doctor or Hospital?

Answer No. 6:

Yes, it is a part of medical negligence, if the patient is admitted under MBBS doctor and is having specific complaint but is not seen by specialist and something wrong happens to the patient as it is the duty of the MBBS doctor to refer the patient to the specialist or any other physician for consultation and treatment. The MBBS doctor cannot practice which is detrimental

to his/her patient. Also, in case of serious illness or in doubtful or difficult condition, it is duty of the MBBS doctor to consult the specialist.

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In such situation, the patient and/or his/her relatives can take appropriate legal remedy against doctor and hospital for medical negligence by lodging a police complaint, consumer complaint, civil suit for damages, complaint before MCI.

The role of the specialist/consultant has to be very clear and there should be transparency.

Question No. 7: What is the age limit for pediatric patients?

Answer No. 7

As per government hospital, the age is up to 12 years, but the physician and pediatricians can treat the patient between the age group of 12 to 18 years.



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