SPECIAL AGENDA ITEM BY CIRCULATION

IN THE MATTER OF:

APPEAL BY DR. KUNAL SAHA, MD, PH.D. AND PRESIDENT OF PEOPLE FOR BETTER TREATMENT

IN THE MATTER OF:

COMPLAINT AGAINST DR. KETAN DESAI

IN THE MATTER OF:

RECOMMENDATION OF THE ETHICS COMMITTEE DATED 08TH OCTOBER, 2010.

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<th>Name</th>
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<tr>
<td>1. Dr. Arun Bal</td>
<td>Consultant Diabetic Foot Surgeon, Hinduja Hospital,</td>
<td>Convenor</td>
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<td>2.Dr. Sangeeta Sharma</td>
<td>Professor &amp; HOD, Department of Neuropsychopharmacology, Institute of Human Behaviour &amp; Allied Sciences,</td>
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<td>3. Dr.(Prof.) Chander Shekhar Shetty</td>
<td>Vice Chancellor, Shri Devraj Urs Academy of Higher Education &amp; Research, Tamaka,</td>
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<td>4. Dr. Anil Dhal</td>
<td>Prof. &amp; Head of Deptt. of Orthopaedics, MAMC,</td>
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<td>Member</td>
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Dr. Kunal Saha has filed an appeal to Board of Governors in supersession of MCI vide his appeal dt. 8th October, 2010. In his appeal, Dr. Kunal Saha has represented that he is President of “People for Better Treatment (PBT)”. It has been stated by him in the appeal that PBT is a major humanitarian organization dedicated to fight healthcare corruption and promotion of better healthcare in India. It has further been stated by him in his appeal that he has lodged a formal complaint against Dr. Ketan Desai with Gujarat Medical Council on 5th May, 2010 soon after arrest of Dr.Ketan Desai. In his appeal, he has annexed a copy of his complaint dt.5.5.10 addressed to the Secretary, Medical Council of Gujarat.

In his complaint dt.05.05.10 to the Secretary, Gujarat Medical Council he has stated that Dr.Ketan Desai has violated the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (For Short “Ethics Regulation) as he was arrested while taking bribe of Rs.2 crores from private medical college. Dr. Kunal Saha has further stated that the “Code of Ethics & Regulations” mandates that the license of a doctor with a criminal offense or moral turpitude must be cancelled. He has further stated in his complaint dt.5.5.10 that such a doctor may be summarily suspended pending investigation of the complaint.

In his appeal, he has stated that Gujarat Medical Council has deliberately refused to entertain the complaint against Dr.Desai with a malicious purpose. It was also alleged by him in the appeal that the Gujarat Medical Council has remained totally silent and did not even bother to send a single response to the serious allegations raised against Dr.Ketan Desai. He has also stated in the appeal to Board of Governors in supersession of Medical Council of India that Dr.Ketan Desai is still President of Gujarat Medical Council as shown on the website of the Gujarat Medical Council. It was further stated by him in the appeal that allowing Dr.Desai to continue the status quo and to maintain his medical license despite brazen violation of every aspect of medical ethics and laws, it would clearly send a wrong signal not only for the honest members of the medical community in India but also to the public at large.

RECOMMENDATIONS OF ETHICS COMMITTEE

Dr. Anil Narang  
Head Neonatology,  
Chetanya Hospital, Sector 44-C, Chandigarh.  
Former Professor and Head Pediatrics and Neonatology  
Member

8. Dr. B.K. Rao,  
Head of Critical Care,  
Sir Gangaram Hospital  
Member

9. Amit Kumar  
Advocate –On-Record  
Supreme Court of India  
Member
In the light of the facts stated above, Dr. Kunal Saha has filed an appeal to the Board of Governors in supersession of Medical Council of India to take necessary and appropriate disciplinary action against Dr. Ketan Desai at the earliest.

The appeal has been circulated to Ethics Committee by Board of Governors in supersession in Medical Council of India. Furthermore, release of passport of Dr. Ketan Desai to attend the conference at World Medical Association proposed to be held at Vancouver in Canada between 13 to 16 October, 2010 was also brought to the notice of Ethics Committee.

The special agenda item was circulated to Ethics Committee as it was felt that the issue of professional misconduct indulged by Dr. Ketan Desai required urgent consideration of the Ethics Committee of Medical Council of India. Therefore, the matter has been referred for our consideration by the office of the Medical Council of India.

We have perused the agenda note and the appended documents. We have also seen the order passed by the Hon’ble Judge, CBI dt. 5.10.2010. We have also perused the application filed by Dr. Ketan Desai for release of passport to attend the conference of World Medical Association proposed to be held on 13-16th October, 2010 at Vancouver in Canada. We have noted that the FIR – RC2(A)/10/ACU/CBI was registered on the allegations that Dr. Ketan Desai, President, Medical Council of India was in touch with one accused Sh. J.P. Singh and he used to pass information to Mr. J.P. Singh pertaining to the inspections of medical colleges to be conducted by MCI for the purpose of recognition of courses and approval of the medical colleges. It was alleged in the FIR that Dr. Ketan Desai by misusing his position as President of Medical Council of India used to pass information pertaining to schedule of inspection. It was also stated in the FIR that Dr. Ketan Desai has not only provided prior inspection schedule of MCI but also ensured that the favourable report was given by the Inspectors of MCI. It was also alleged in the F.I.R. that sum of Rs. 2 crores was delivered to J.P. Singh on 22.4.2010 for giving the same to Dr. Ketan Desai for favour shown by Dr. Ketan Desai to medical colleges. In other FIR i.e. RC No.3(A)/2010/CBI/ACU/9, the allegation is Dr. Ketan Desai, the then President of MCI, is involved in the corrupt practices. It was alleged in the FIR that Dr. Ketan Desai, by indulging in corrupt practices acquired by using his position as President, MCI from August, 1996 to November, 2002 and from 1st March, 2009 to 22.04.2010 disproportionate assets to his known source of income. We have also seen the newspaper article published on 6.10.10 wherein it has been stated that the Hon’ble Court has permitted release of passport of Dr. Ketan Desai on the application of Dr. Ketan Desai to attend the conference of World Medical Association at Vancouver in Canada between 13-16th October, 2010.
We have also seen the letters written by the Medical Council of India dt.7.10.10 to Director, CBI and the Secretary General of World Medical Association. Both the letters dt.7.10.2010, the Board of Governors in supersession of MCI has stated that the corrupt activities of Dr.Ketan Desai has caused incalculable harm to the reputation of medical practitioners in India. It has also stated that the matter has been referred to Ethics Committee for examination of the complaint/appeal. By virtue of his position as medical practitioner, Dr.Ketan Desai is now going to represent the medical practitioners of India in conference of World Medical Association proposed to be held at Vancouver in Canada between 13 to 16 October,2010.

We have gone through the contents of FIR, the order passed by the Special Judge and also the application filed by Dr.Ketan Desai for release of passport. We have also seen the complaints and various other documents which have been placed for consideration of Ethics Committee.

Before adverting further to complaint and appeal, it would be useful to refer to the relevant legal provisions dealing with Professional Conduct prescribed for medical practitioners. Section 20A of the Indian Medical Council Act,1956 which deals with Professional Conduct is as under:-

"PROFESSIONAL CONDUCT

20.A (1) The Council may prescribe standards of professional conduct and etiquette and a code of ethics for medical practitioners.

(2) Regulations made by the Council under sub-section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provisions shall have effect notwithstanding anything contained in any law for the time being in force."

Section 20A (2) further provides that any violation of the provisions of Regulations framed shall constitute infamous conduct in any professional conduct. It clearly states that the Regulations framed in the Indian Medical Council Act,1956 shall have overriding effect.

Section 33(m) of the Indian Medical Council Act,1956 confers powers on Medical Council of India to frame Regulations with the previous sanction of the Central Government for laying down the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners. The Medical Council of India in pursuance to Section 20A read with Section 33(m) of the Indian Medical Council Act,1956 has framed Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002 (hereinafter referred to “Regulation”). The relevant provisions of the
said Regulations dealing with the issue in question are reproduced herein for the sake of ready reference:—

“Duties and responsibilities of the Physician in general

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.

1.2.1 The Principal objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man.

1.7 Exposure of Unethical Conduct: A Physician should expose, without fear or favour, incompetent or corrupt, dishonest or unethical conduct on the part of members of the profession.

1.9 Evasion of Legal Restrictions: The physician shall observe the laws of the country in regulating the practice of medicine and shall also not assist others to evade such laws. He should be cooperative in observance and enforcement of sanitary laws and regulations in the interest of public health. A physician should observe the provisions of the State Acts like Drugs and Cosmetics Act, 1940; Pharmacy Act, 1948; Narcotic Drugs and Psychotropic substances Act, 1985; Medical Termination of Pregnancy Act, 1971; Transplantation of Human Organ Act, 1994; Mental Health Act, 1987; Environmental Protection Act, 1986; Pre-natal Sex Determination Test Act, 1994; Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954; Persons with Disabilities (Equal Opportunities and Full Participation) Act, 1995 and Bio-Medical Waste (Management and Handling) Rules, 1998 and such other Acts, Rules, Regulations made by the Central/State Governments or local Administrative Bodies or any other relevant Act relating to the protection and promotion of public health.

5.1 Physicians as Citizens: Physicians, as good citizens, possessed of special training should disseminate advice on public health issues. They should play their part in enforcing the laws of the community and in sustaining the institutions that advance the interests of humanity. They should particularly co-operate with the authorities in the administration of sanitary/public health laws and regulations.
7. MISCONDUCT:

The following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action:

7.4 Adultery or Improper Conduct: Abuse of professional position by committing adultery or improper conduct with a patient or by maintaining an improper association with a patient will render a Physician liable for disciplinary action as provided under the Indian Medical Council Act, 1956 or the concerned State Medical Council Act.

8.1 It must be clearly understood that the instances of offences and of Professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the Medical Council of India and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the Medical Council of India and/or State Medical Councils have to consider and decide upon the facts brought before the Medical Council of India and/or State Medical Councils.

8.2 It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/ Societies/Bodies.

A close examination of the above said legal provisions leave no scope of doubt that a registered medical practitioner is required to maintain dignity and honour of the profession. It is also clear from the perusal of the above said provisions that he should not indulge in any such activities which are corrupt in nature and bring disrepute to medical profession. A long list of duties have been prescribed in the Regulations for medical practitioners. It is also expected of medical practitioners that they should play their part in enforcing the laws of the community and in sustaining the institutions that advance the interests of humanity. It is also expected of them that they should particularly
be cooperative with authorities in the administration of sanitary/public health law and regulations. Regulation 7.4 provides that a medical practitioner should not abuse his professional position. Regulation 7.7 provides that any medical practitioner who has shown to have given signed or given in any certificate, notification, reports or documents of similar character which is untrue, misleading or improper is liable to have his name deleted for improper.

Regulation 8.1 clearly states that instances, offences and professional misconduct which are given above do not constitute and are not intended to constitute a complete list of infamous act which calls for disciplinary action and MCI or State Medical Council are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioners. It further provides that circumstances may or do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. It confers power on Medical Council of India and/or State Medical Council to consider and decide upon the facts brought before the Medical Council of India. The Medical Council of India is conferred with power to suspend the licence of a medical practitioner under clause 8.5 of the said Regulations.

The provisions referred to above clearly indicate that the Board of Governors in supersession of Medical Council of India is vested with the power to take appropriate action against the registered medical practitioners if he/she commits any infamous conduct which amounts to professional misconduct.

In the light of the above said facts and legal provision, we have to now examine as to whether a prima-facie case of professional misconduct is made out against Dr. Ketan Desai or not. The allegations mentioned in the FIR is that he has received huge amount of bribe for granting permission to the medical colleges which do not fulfill the requirement of Regulations of MCI are grave in nature. A perusal of FIR clearly shows that a sum of Rs. 2 crore was recovered from alleged the agent of Dr. Ketan Desai. Further perusal of the other FIR shows that huge amount was recovered from the house of Dr. Ketan Desai showing that his assets are disproportionate to his known sources of income. Dr. Ketan Desai who was holding the highest post of medical community appears to have misused his position for giving recognition to the medical colleges which are not having requisite facilities as per Regulations framed under Indian Medical Council Act,1956. It appears that Dr. Ketan Desai has misused his position as a registered medical practitioner in as much as by virtue of the said position only, he was elected as President of the Medical Council of India. It prima-facie appears to us that he did not follow the duties of medical practitioners mentioned in Chapter 5 of the Regulations. It further appears that the conduct of Dr. Ketan Desai is unbecoming of medical practitioner in as much as he violated rules & regulations in facilitating the recognition of medical colleges which are not having the
requisite facilities to teach undergraduate and postgraduate courses. It prima facie appears to the Ethics Committee that by the said methods, he may have amassed huge assets. His conduct, prima-facie appears to be against the provision of Regulations. It further appears to us that he has tarnished the image of the doctors by openly and brazenly violating the Rules & Regulations governing the medical education. It prima facie amounts to professional misconduct. It was also informed to Medical Council that he remained in jail for more than five months for offences allegedly committed by him.

It appears to us that Dr. Ketan Desai being a registered medical practitioner; he was required to uphold the dignity and honour of medical profession which he has lowered by alleged his corrupt practices. It was incumbent upon him to maintain the highest standards of medical profession. It appears to us that he has abused the professional position by improper conduct. It further prima facie appears that his misconduct is covered by clause 7.7 of the Regulation which provides that a medical practitioner shall not report or document which is untrue, misleading or improper. Regulation 7.7 provides that for punishment by way of deletion of the name of medical practitioner from the Register if he indulges in any such activities. It appears to us that by his various acts and omission, Dr. Ketan Desai has brought disrepute to medical practitioners. It appears to us that prima facie sufficient grounds are made out for initiating proceedings against him under Chapter 8 of Ethics Regulations. It further appears to us that during the pendency of proceedings before the Ethics Committee, he should be not permitted to practice medicine. However, before taking further action in the matter, it would be in the interest of justice that a show cause to Dr. Ketan Desai be issued as to why his name be not removed from the Indian Medical Register for indulging in professional misconducts. A final view on this issue be taken by us only after providing adequate opportunity to Dr.Ketan Desai to represent his stand before Ethics Committee.

In the light of aforesaid facts, we are of the unanimous opinion that a notice should be issued on the appeal/complaint to Dr. Ketan Desai as to why his name be not removed from the Indian Medical Register for indulging in professional misconduct. We further recommend to Board of Governors in supersession of the Medical Council of India to pass an order suspend his license to practice medicine during the pendency of instant complaint/appeal before the Ethics Committee of the Board of Governors in supersession of Medical Council of India.