

SRI LANKA MEDICAL COUNCIL

INSTRUCTIONS ON

SERIOUS PROFESSIONAL MISCONDUCT

TO

MEDICAL PRACTITIONERS AND

DENTISTS

SRI LANKA MEDICAL COUNCIL
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SERIOUS PROFESSIONAL MISCONDUCT

Serious professional misconduct was defined by Lord Justice Lopes in 1894 as *"If a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful and dishonourable by his professional brethren of good repute and competency, then it is open to the Medical Council, if that be shown, to say that he has been guilty of infamous conduct in a professional respect"*.

The areas of professional conduct and personal behaviour are considered under the following six headings:-

1. Neglect or disregard by doctors of their professional responsibilities to their patients for their care and treatment.
2. Abuse of professional privileges or skills.
3. Derogatory professional conduct
4. Advertising, canvassing and related offences.
5. Comment on professional colleagues.
6. Any other act of commission or omission deemed as unacceptable to the disciplinary committees of the Medical Council.

1. Neglect or disregard by doctors of their professional responsibilities to their patients for their care and treatment

Responsibility for standards of medical care

In pursuance of its primary duty to protect the public, the Council may institute disciplinary proceedings when a doctor appears,

- a. to have disregard or neglected professional duties, or
- b. to have failed to visit, or provide or arrange treatment for a patient when necessary.

The public is entitled to expect that a registered medical practitioner will afford and maintain a good standard of medical care. This includes:

- a) a conscientious assessment of the history, symptoms and signs of a patient's condition;
- b) a sufficiently thorough professional attention, examination and where necessary, diagnostic investigation;
- c) competent and considerate professional management;
- d) appropriate and prompt action upon evidence suggesting the existence of a condition requiring urgent medical intervention; and
- e) readiness, where the circumstances so warrant, to consult appropriate professional colleagues.

Doctors are advised to have a nurse or chaperone specially when examining patients of the opposite sex and also when performing sensitive examinations, e.g., examination of breast, vaginal examination and rectal examinations.

A comparable standard of practice is to be expected from medical practitioners whose contribution to a patient's care is indirect, for example those in laboratory and radiological specialties.

Consent to examination and treatment

- i. The patient must consent to examination and treatment.
 - ii. Consent is valid if freely given, without any compulsion, and where necessary in writing.
 - iii. Consent should be "informed" and reasonable hazards must be disclosed.
 - iv. It is the patient who decides whether to accept or reject the advice of the practitioner.
- A. Consent may be implied where a patient requests treatment.
- B. Consent has to be obtained for examination.

- i. On request by a third party, e.g., judiciary, employer for insurance purpose etc.
- ii. In special cases, e.g., victims of rape or assault, or invasive examination such as blood tests, lumbar puncture, etc.
- iii. Oral or written consent should be obtained, such as for rectal, genital – external or internal, examination of breasts and procedures such as endoscopies and ultrasonography using special probes.
- iv. For research projects.

C. Consent has to be obtained for treatment, in writing, for:

- a. All surgical procedures.
- b. Hazardous treatment.
- c. Where mutilation or permanent disability is likely.
- d. Research projects.

D. Exceptions to consent :

- i. Emergencies – to save life,
- ii. Where treatment is refused by patient or guardian, when it is essential to save life. In case of refusal of treatment, an appropriate record should be made, and if possible, it should be attested by the guardian or parent.

The council is concerned with errors in diagnosis or treatment, and with the kind of matters which give rise to action in civil courts for negligence, only when the doctor's conduct in the case has involved such a disregard of professional responsibility to patients or such a neglect of professional duties as to raise a question of serious professional misconduct. This is all the more important when such errors are repeated. A question of serious professional misconduct may also arise from a complaint or information about the conduct of a doctor which suggests that the welfare

of patients has been endangered by a doctor persisting in unsupervised practice of a branch of medicine without having the appropriate knowledge and skill or having acquired the experience which is necessary.

Apart from a doctor's personal responsibility to patients, doctors who undertake, to direct or perform clinical work for organisations offering private medical services should satisfy themselves that those organisations provide adequate clinical and therapeutic facilities for the services offered.

Delegation of medical duties to professional colleagues

The council recognises that in many branches of professional practice doctors cannot at all times attend to all their patients' needs. It is therefore both necessary and desirable that when doctors are absent from duty, arrangements should be made whereby their professional responsibilities may be undertaken by suitably qualified professional colleagues. Any practitioner who makes use of deputising services has a duty to ensure that their deputies are medical practitioners registered in the Sri Lanka Medical Council and have the appropriate experience, knowledge and skill to discharge the duties for which they will be responsible. Similarly, doctors under contract of service, such as consultants in hospital practice, and doctors engaged in private practice on either part-time or full-time basis should seek to ensure that proper arrangements are in hand to cover their own duties, or those of their junior colleagues, during any period of absence, by doctors with appropriate qualifications and experience. Consultants and other senior hospital staff should delegate to junior colleagues only those duties which are within their capabilities.

Any deputising arrangement should make provision for prompt and proper communication between the deputy and the doctor who has primary responsibility for the patient's care. However, so far as the

Council is concerned, the deputy is personally accountable for any neglect or disregard of professional responsibilities towards patients of the doctor whom he or she is deputising.

Delegation of duties to nurses and others

The council recognises and welcomes the growing contribution made to healthcare by nurses and other persons who have been trained to perform specialised functions, and it has no desire either to restrain the delegation to such persons of treatment or procedures falling within the proper scope of their skills or to hamper the training of medical and other healthcare students. But a doctor who delegates treatments or other procedures must be satisfied that the person to whom they are delegated is competent to carry them out. It is also important that the doctor should retain ultimate responsibility for the management of these patients because only the doctor has received the necessary training to undertake this responsibility.

For these reasons a doctor who improperly delegates to a person who is not a registered medical practitioner functions requiring the knowledge and skill of a medical practitioner is liable to disciplinary proceedings. The Council will proceed against those doctors who employ assistants who are not medically qualified to conduct their practices or who are not registered in the Council. It will also proceed against doctors who by signing certificates or prescriptions or in other ways have enabled persons who were not registered medical practitioners to treat patients as though they were so registered.

2. Abuse of professional privileges or skills

Prescribing of drugs

The prescription of controlled drugs is reserved to members of the medical professions, and the prescribing of such drugs is subject to statutory restrictions. The Council has regarded as serious professional

misconduct the prescription or supply of drugs of dependence otherwise than in the course of *bona fide* treatment. Disciplinary proceedings will also be taken against doctors convicted of offences against the laws which control drugs where such offences appear to have been committed in order to gratify the doctor's own addiction or the addiction of other persons.

Medical certificates

A doctor's signature is required by statute on certificates for a variety of purposes on the presumption that the truth of any statement which a doctor may certify can be accepted without question. Doctors are, therefore, expected to exercise care in issuing certificates and similar documents, and should not certify statements which they have not taken appropriate steps to verify. Any doctor who in his/her professional capacity signs any certificate or similar document containing statements which are untrue, misleading or otherwise improper may be liable to disciplinary proceedings.

Termination of pregnancy

The termination of pregnancy is regulated by law and doctors must observe the law.

Abuse of privileges conferred by custom: professional confidence, undue influence, and personal relationships between doctors and patients

Patients grant doctors privileged access to their homes and confidence, and some patients are liable to become emotionally dependent upon their doctors. Good medical practice depends upon the maintenance of trust between doctors and patients and their families, and the understanding by all that proper professional relationships will be strictly observed. In this situation doctors must exercise great care and discretion in order not to damage this crucial relationship. Any action

by a doctor which breaches this trust may raise a question of serious professional misconduct.

These particular areas may be identified as those in which this trust may be breached:

- a) doctors may improperly disclose information obtained in confidence from or about a patient;
- b) doctors may improperly exert influence upon a patient to lend them money or alter wills in their favour.
- c) doctors may enter into an emotional or sexual relationship with a patient (or with a member of patient's family) which disrupts the patient's family life, or otherwise damages or causes distress to the patient or his/her family.

3. Personal behaviour: conduct derogatory to the reputation of the profession

The public reputation of the medical profession requires that every member observes proper standards of personal behaviour, not only in professional activities but at all times. This is the reason why a doctor's conviction of a criminal offence may lead to disciplinary proceedings even if the offence is not directly connected with the doctor's profession. In particular, three areas of personal behaviour can be identified which may occasion disciplinary proceedings.

- Personal misuse or abuse of alcohol or other drugs.
- Dishonest or derogatory behaviour.
- Indecent or violent behaviour.

Personal misuse or abuse of alcohol or other drugs

In the opinion of the Council, convictions for drunkenness or other offences arising from misuse of alcohol (such as driving when under

influence of alcohol) indicate habits which are discreditable to the profession and may be a source of danger to the doctor's patients. After a first conviction for drunkenness a doctor may expect to receive at least a warning letter and may, particularly if there are further convictions, become the subject of an inquiry by the Professional Conduct Committee or investigation of fitness to practice.

Doctors who treat patients or perform other professional duties while under the influence of drink or drugs, or who are unable to perform their professional duties because they are under the influence of drinks or drugs, are liable to disciplinary proceedings or to inquiry by the Council into their fitness to practice.

Dishonesty: improper financial transactions

Doctors are liable to disciplinary proceedings if they are convicted of criminal deception (obtaining money or goods by false pretences), forgery, fraud, theft or any other offence involving dishonesty.

The Council takes a particularly serious view of dishonest acts committed in the course of a doctor's professional practice (whether in state service or otherwise), or against patients or colleagues. Such acts, if reported to the Council, may result in disciplinary proceedings.

Disciplinary proceedings may also result from other improper arrangements calculated to extend, or otherwise benefit, a doctor's practice, whether in relation to the provision of specialist services or in general practice. These include, for example, undue pressure to persuade patients to accept private treatment by reliance upon representations about the comparative availability under the state health services or privately.

The Council also takes serious view of the prescribing or dispensing of drugs or appliances with improper motives. The motivation of doctors

may be regarded as improper if they have prescribed a drug or appliance in which they have a direct or indirect financial interest, or if they have prescribed a product manufactured or marketed by an organisation from which they have accepted an improper inducement.

The Council has also regarded with concern arrangements for fee splitting under which one doctor would receive part of a fee paid by a patient to another doctor. The association of a medical practitioner with any commercial enterprise engaged in the manufacture or sale of any substance which is claimed to be of value in the prevention or treatment of disease but is of undisclosed nature or composition, may also be regarded as improper.

Doctors, like lay members or officers of any health authority, have a duty to declare an interest before participating in discussions which could lead to purchase by a public authority of goods or services to which they, or a member of their immediate family, have a direct or indirect pecuniary interest. Non-disclosure of such information may, under certain circumstances, amount to serious professional misconduct.

Indecency and violence

Indecent behaviour towards, or a violent assault on, a patient would be regarded as serious professional misconduct. Any conviction for assault or indecency would render a doctor liable to disciplinary proceedings, and would be regarded with particular gravity if the offence was committed in the course of professional duties or against the doctor's patients or colleagues.

4. Advertising of doctor's services, canvassing and related offences

The Council encourages doctors to provide factual information about their professional qualifications, by registering additional qualifications, if any, and their services.

Professional misconduct could depend on:

- a) Suggestion of a doctor's unique capabilities as compared with other doctors.
- b) Published matter, which could attract patients or bring financial benefit.
- c) An improper motive for arranging a publication.

Advertising

Advertising has been judicially held to constitute malpractice and, therefore, grounds for disciplinary action.

- a. Direct advertising
- b. Publicity

Direct advertising

- i. Only closed letters to professional colleagues or to regular patients regarding change of address, consultation hours etc. are permissible. A suitable notice in the waiting room is allowed.
No press notice or other public announcements are permitted.
- ii. Professional qualifications displayed on a notice board and/or letterhead should be those registered in the Medical Council.

Publicity

- i. A doctor may publish books and articles, or write on medical topics in the lay press in his own name, and he can also participate in discussions on medical subjects on radio or television provided:
 - a) there is no professional advantage accruing, and
 - b) there is no breach of professional confidence.
- ii. For radio and T.V. programmers, the following guidelines should be observed.

A programme should preferably feature a number of participants rather than a single person. Such spokesmen should be from recognised institutions such as hospitals, universities and academic colleges.

The name, specialty and/or professional status of each participant could be disclosed in the interest of authenticity and acceptability. This should however be done only ONCE generally at the commencement of the programmes. In subsequent reference, the participant should be mentioned by name only.

SETTING UP IN PRACTICE

Name boards

- i. These should not be ostentatious in size and form.
- ii. Only the doctor's name, professional qualifications and surgery hours are allowed. Only medical qualifications should be used.
- iii. Professional qualifications displayed on a notice board or letterhead should only be those registered in the Medical Council.
- iv. More than one language is permitted where necessary.
- v. Direction boards should not be unnecessarily large or repeated frequently.

Notices

- i. Only closed letters to professional colleagues or to regular patients regarding changing address, consultation hours etc. are permissible.
- ii. A letter announcing a change should include only:
The name of the doctor, his medical qualifications and main specialty, with the brief details of changes in address and/or consultation hours.
- iii. Professional visiting cards, prescription forms and letterheads should not be displayed in hotels, clubs or shops.
- iv. Such items should carry only the qualifications registered in the Medical Council.

- v. Directories: a doctor's name can appear in the telephone directory. The name can appear in the list of doctors' names, provided that it is open to other doctors too.

5. Degrading of other doctors, canvassing and other improper practices

Professional misconduct could be caused by

- i. Depreciation by a doctor of the skill, knowledge, qualifications or services of another doctor.
- ii. Canvassing, directly or through an agent, for the purpose of obtaining patients.
- iii. Any improper arrangement to extend a practice.

FITNESS TO PRACTICE

The Sri Lanka Medical Council can act when the fitness of a doctor to practice is seriously impaired by reason of his physical or mental condition.

CONCLUDING REMARKS

This pamphlet does not pretend to be a complete code of professional ethics, or to specify all criminal offences or forms of professional misconduct which may lead to disciplinary action. To do this would be impossible, because from time to time with changing circumstances the Council's attention is drawn to new forms of professional misconduct.

Doctors who seek detailed advice on professional conduct in particular circumstances should consult a medical defence society or professional association. The Council can rarely give such advice because of its judicial function.

