Maharashtra Medical Council Act (1965): suggested amendments

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Introduction

The Maharashtra Medical Council Act (hereafter referred to as *the Act)*, legislated in 1965, has deficiencies that do not allow the Council to respond to changes in the patterns of medical practice, education and health-care services and the vast increase in number of medical practitioners over the past three decades.

The Maharashtra Medical Council (hereafter referred to as *the Council)* has lost all credibility. It neither helps patients nor protects doctors. It has failed to enforce ethical standards. The rampant commercialisation of the medical profession is there for all to see. The Council functions more as a body with vested interests than an agency for ensuring discipline. Powers conferred on the Council by the Act are either misused or not used at all. No effort is made by the Council to plug gaps in the Act. Rules for election to the Council are, even now, framed by the government and this sorry state is welcomed by the Council as it permits indulgence in flagrant electoral malpractice.

Members of the Council awakened to deficiencies in the Act only after the Consumers Protection Act (COPRA) was made applicable to doctors. It is ironic that if members of the Council had performed their duties sincerely, such an application would never have become necessary.

In order to make the Act relevant and effective, I suggest the following changes.

Composition of the Council

At present the number of members nominated to the Council by the Government of Maharashtra directly or indirectly (as through the Vice-Chancellor of the University of Bombay) is greater than the number of elected members. This violates the first principle of any elected forum and needs immediate correction so that members elected by the medical profession are in absolute majority. This will go a long way in reducing the influence of politicians on what is a professional disciplinary agency.

Unambiguous criteria to be fulfilled before an individual can be nominated to the Council must be laid down so that only those of proven honesty and merit can meet them.

The total number of elected members must be related to the number of registered medical practitioner. I suggest one member for every five thousand registered practitioners. The ceiling for the total number of members of the Council could be placed at thirty.

Election of office-bearers too needs rectification so that none of the nominated members can hold the office of President of the Council.

Elections to the Council

The present system of election through postal ballot has proved totally unsatisfactory, lending itself to fraudulent practices.

Taking a cue from the practice for elections to the Bar Council, I suggest verified casting of votes by each individual whose name is present on the electoral roll. Voting centres must be located at tahsil or taluka offices, Primary Health Centers, District Hospitals and Medical Colleges. Counting of votes must be carried out openly at a central location. All voters must be provided with an identity card bearing the individual's photograph and signature. Voting should be restricted to registered doctors practising in the state of Maharashtra at the time of election.

Under exceptional circumstances (as after a grave accident or serious illness), postal ballot can be permitted provided the voter signs and seals the outer envelope in the presence of a magistrate.

Any appeal or complaint against electoral practices must be referred to a court of law and not to the minister of health or any other government official.

The Act must incorporate the above provisions and be amended to ensure adequate funds, machinery and powers to the Council for this purpose.

The Medical Register and fees for registration

Many of the provisions regarding the maintenance of the register are being neglected by the Council. Take for instance section 23 which empowers the council to strike off the register the names of all those not renewing their registration every five years. Were this implemented, a large number of names would disappear from the register.

Each certificate of registration must bear its date of expiry before which it must be renewed. Renewal must be made dependent not only on the payment of appropriate fees (see below) but also on the production of evidence of having completed the minimum requirement for continued education as by attending medical conferences and seminars and by presenting or publishing papers.

Notices must be sent every five years to each registered practitioner demanding renewal of registration. To

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cover the costs of sending such a notice and other expenses, the Council should raise its fee for registration.

I suggest that the fee for provisional registration be raised to Rs. 1000 and that for definitive registration to Rs. 2500. The fee for additional entries should be raised to Rs. 500 and that for renewal to Rs. 1000. Failure to renew in time should attract a penalty of Rs. 100 per month for six months beyond the date of expiry. After six months, the practitioner should be required to register afresh, paying the full fee of Rs. 2500.

Such increases in fees will ensure that the Council has adequate funds for the performance of its statutory tasks.

Those found practising without registration should be prosecuted.

The register must be computerised and constantly updated, the names of doctors registered with the Council but practising outside Maharashtra being maintained in a separate register. The register should be made available on payment of cost.

Funding and staff

At present the Council has no independent source of income apart from the fees for registration.

Since it performs statutory duties, the Council should be supported by a generous annual grant linked to the number of registered practitioners. This grant should cover all administrative expenses and should be over and above the sum paid by government for the conduct of elections.

The Council should also be given a free hand in raising additional funds needed for its activities after ensuring that vested interests such as the owners of private medical colleges, other commercial organisations such as pharmaceutical companies and those manufacturing goods used by doctors are kept away. Annual reports of audited accounts must be submitted to each registered member and to all concerned authorities.

The staff employed by the Council should be carefully chosen. Emphasis should be placed on diligence, sincerity and honesty. The senior executive officer (Registrar) must possess the competence for dealing with complaints by patients, families, social welfare agencies and others, courteously and efficiently.

Disciplinary jurisdiction

At present complaints against doctors are heard by the executive committee of the Council. Doctors and a single legal assessor act as judges. The proceedings are confidential.

There is need for transparency. The Council should welcome participation by lay individuals, consumer organisations and those working on behalf of patients.

The Council should maintain a publicly announced panel of respected experts in various fields and should co-opt one or more from this panel to assist it in dealing with specific complaints.

Each complaint must be dealt with within a fixed time limit. This will be possible if the frequency of meetings of the Council is increased and emphasis is placed on dealing with complaints, Any delay in arriving at a decision must be fully explained and justified. Complainant and doctor must be permitted the help of lawyers and experts.

The Council must publish, regularly, reports detailing complaints received, those dealt with, decisions made - with the basis for each decision being clearly spelt out - and action taken. These reports must be widely circulated among all registered practitioners and the media and should be made available on payment to anyone requesting them.

The suggestion that the Council should be empowered to award compensations to patients is not in keeping with international practice. The Council's task is to enforce ethics and discipline. The complainant can use the Council's decision in civil or criminal legal action against an erring doctor.

Any appeal against the decision of the Council should be made in a court of law. There should be no role for interference by a Minister or any other Government official. Where a doctor is found guilty of malpractice by the Council, disciplinary action should be stayed for 45 days, within which period the doctor may appeal to a court of law. This period will also permit the doctor to make alternative arrangements for the care of his patients.

Ethical jurisdiction

The Council is doing precious little to enforce ethical standards. Section 22(6) empowers it to take *suo motu* action against quacks, charlatans and others practicing unethically. We have yet to see such action.

If the Act is modified, as suggested above, the Council will possess sufficient funds for this purpose.

Apart from enforcing ethics, the Council can guide and inspire registered doctors. The panel of senior and experienced doctors established by the Council can also help in producing a series of guidelines on issues such as whether kidneys should be taken for transplantation from unrelated donors, the practice of euthanasia, whether a doctor should assist a patient to die, whether genetic manipulation and fetal tissue experiments should be permitted and so on.

Above all, the Council must forsake its unhealthy policy of secrecy and regain the confidence of the entire

medical profession. The present feeling of the council serving as a superior, exclusive agency apart from the medical profession at large - creating the illusion of 'we' (the Council) and 'they' (the rest) - must be abolished.

Medical education

The Council is responsible for the maintenance of high standards in our medical colleges and at the University. Section 28, for instance, empowers it to recommend the termination of any course of education if this is found unsatisfactory.

The monitoring of standards of teaching aside, even the ever worsening malpractice at the University examinations (exemplified by *l'affaire Sabnis)* has failed to stir members of the Council into action.

The Council should use the Act to publicly supervise the conduct of each and every examination held by the University of Bombay right from the manner in which examiners are appointed to' how evaluations are made in the practicals. The findings of the Council must be made public. Corrupt examiners should be summarily debarred and struck off the rolls.

Conclusion

The present loss of credibility of the Council was highlighted by the manner in which thousands of registered medical practitioners either did not vote for the elections to the Council or gave away blank voting papers as they felt that the outcome of the elections was irrelevant and no improvement was ever possible.

Members of the Council display great enthusiasm in fighting the provisions of COPRA. It is high time we had an honest, sincere, concerned and strong Council which will turn away from such tilting at windmills and begin solving the real problems besetting and besmirching the medical profession.

Such a Council will benefit patients and doctors.