

# How to Avoid Litigations in Medical Practice

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**“Consumer Protection Act, 1986; hated it long enough, now it's time to understand it.”**

The objective of Consumer Protection Act, 1986, is to provide speedy and simple redressal to consumer disputes. By providing a wider access to the justice system through speedy procedure, absence or nominal court fees and adequate compensation, this Act has thus revolutionized the system of justice and made it favorable to the consumer. Section 2(1)(0) of the CPA says..

**"Service" means service of any description which is made available to the potential users and includes, but not limited to, the provision of facilities** in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, **but does not include the rendering of any service free of charge or under a contract of personal service;**

A **'contract for service'** implies a contract whereby one party undertakes to render services, professional or technical to one or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A **'contract of service'** implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as its mode and manner of performance.

The issue of whether medical services should be brought under the CPA was long and hotly debated.

Justice V. Bala Krishna Eradi, President NCDRC in landmark judgment in *Cosmopololitan Hospital and anr. V. Vasantha P. Nair 1992*, held that providing medical assistance for the payment carried by the hospital and the medical professional, falls within the scope of expression “ Service” as defined in the section 2(1) (0) of the CPA, and in in case of deficiency of service, the aggrieved party could invoke the provisions under the act.

Its caused lot of debates both in favor and against the judgment. Various High Courts State Commissions had different views on the issue.

**But final word was said by the Supreme Court in Indian Medical Association v. V.P. Shanta case [ AIR 1996 SC 550]**

The Supreme Court said that the relationship between a medical practitioner and a patient carries within it certain degree of mutual confidence and trust, therefore, the service rendered by the medical practitioner can be regarded as services of personal nature but since there is no relationship of master and servant between the doctor and the patient, the contract between the medical practitioner and the patient cannot be treated as a **contract of personal service** but is a **contract for services** and the service rendered by the medical practitioner to his patient under such a contract is not covered by the exclusionary part of the definition of 'service' contain in section 2(1)(0) of the Act.

With this judgment the controversy relating to the applicability of the Consumer Protection Act, to the medical profession in India was finally settled.

With the aforesaid verdict the Supreme Court also gave certain guidelines to determine which services are covered and which are excluded.

**The Supreme Court on the basis of the detailed discussion of the case arrived at the following conclusions.**

- (1) Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medical and surgical, would fall within the ambit of 'service' as defined in Section 2(1) (0) of the Act.
- (2) The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provision of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.
- (3) A 'contract of personal service' has to be distinguished from a 'contract for personal services'. In the absence of relationship of master and servant between the patient and medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a contract for personal services'. Such service is service rendered under a contract for personal service and is not covered by exclusionary clause of the definition of 'service' contained in Section 2(1)(0) of the Act.
- (4) The expression 'contract of personal service' in Section 2(1) (0) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in section 2(1)(0) of the Act.
- (5) Service rendered free of charge by a medical practitioner attached to a Hospital/Nursing

home or a medical officer employed in a Hospital/Nursing home where such service are rendered free of charge to everybody would not be 'service' as defined in Section 2(1) (0) of the Act. The payment of a token amount for registration purpose only at the Hospital/Nursing home would not alter the position.

- (6) Service rendered at a Non-Government Hospital/Nursing home where no charge whatsoever was made from any person availing of the service and all patients (rich and poor) are given free service - is outside the purview of expression 'service' as defined in section 2(1) (0) of the Act. The payment of a token amount for registration purpose only at the Hospital/Nursing home would not alter the position.
- (7) Service rendered at a Non-Government Hospital/Nursing home where charges were required to be paid by the person availing of such service falls within the purview of the expression 'service' as defined in section 2(1)(0) of the Act.
- (8) Service rendered at a Non-Government Hospital/Nursing home where charges were required to be paid by persons who were in a position to pay and persons who cannot afford to pay were rendered service free of charge would fall within the ambit of the expression 'service' as defined in section 2(1) (0) of the Act irrespective of the fact that the service is rendered free of charge to person who are not in a position to pay for such services. Free service, would also be "service" and the recipient a 'consumer' under the Act.
- (9) Service rendered at a Government hospital/health center/dispensary where no charge whatsoever made from any person availing the services and all patient (rich and poor) are given free service- is outside the purview of the expression 'service' as defined in Section 2(1) (0) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(10) Service rendered at a Government hospital/health centre/dispensary where services were rendered on payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of expression 'service' as defined in section 2(1)(0) of the Act irrespective of the fact that the Service is rendered free of charge to the persons who do not pay for such service. Free service would also be 'service' and the recipient a 'consumer' under the Act.

(11) Service rendered by a medical practitioner or hospital/nursing home could not be regarded a service rendered free of charge if the person availing of the service has taken an insurance policy for medical care where under the charge for consultation, diagnosis and medical treatment were borne by the insurance company and such service would fall within the ambit of 'service' as defined in section 2(1)(0) of the Act.

(12) Similarly, where, as a part of the condition of services', the employer bears the expenses of medical treatment of an employee and his family members dependent on him the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under section 2(1)(0) of the Act.

As a result of this celebrated judgment, medical profession has been brought under the section 2(1)(0) of CPA, 1986 and also, it has included the following categories of doctors/ hospitals under the section;

- All medical practitioners doing independent medical practice.
- Private hospitals charging all patients.
- All hospital having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals.
- Medical practitioners and hospitals covered by appropriate mediclaim insurance policies.
- It exempts only those hospitals and the medical practitioners of such hospitals which offer free

service to all patients (Dr. K. Mathiharan).

Also, this judgment says that the deficiency in service means only negligence in a medical negligence case and it would be determined under CPA by applying the same test as is applies in an action for damages for negligence in a civil court.

As a result of this judgment, virtually all private and government hospitals and the doctors employed by them and the independent medical practitioners except primary health centers, birth control measures, anti malaria drive and other such welfare activities can be sued under the CPA.

### Pecuniary Jurisdiction

There are three fora at the District, State and the National level. If the compensation claimed is upto Rs. 20 lakh, a complaint can be filed before the District Forum and before the State Commission if it is above Rs. 20 lakh and below Rs. 1 crore and before the National Commission if it is above Rs. 1 crore.

### Limitation period:

Section 24A of the CPO defines limitation period and also state the powers of the consumer fora to relax the same. The section reads as under:-

1. The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.
2. Not with standing anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

### Appeal:

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of

thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filling it within that period.

### **Regulation no. 14 of The Consumer Protection Regulations reads as under:**

(1) Subject to the provision of section 15, 19 and 24A, the period of limitation in the following matters shall be as follow:-

- I. Revision Petition shall be filled within 90 days from the date of the order or the date of receipt of the order, as the case may be;
- II. Application for setting aside the *ex-parte* order under section 22A or dismissal of the complaint in default shall be maintainable if filed within thirty days from the date of the order or date of receipt of the order, as the case may be;
- III. An application for review under sub-section (2) of section 22 shall be filed to the National Commission within 30 days from the date of the order or receipt of the order, as the case may be;
- IV. The period of limitation for filing any application, for which no period of limitation has been specified in the Act, the rules of these regulations shall be thirty days from the date of the cause of action or the date of knowledge.

(2) Subject to the provisions of the Act, the Consumer Forum may condone the delay in filing an application or a petition referred to in sub-regulation (1) if valid and sufficient reasons to its satisfaction are given.

### **Recent development in consumer protection Act 1986.**

The govt has introduced a new bill in Lok Sabha on 5th january 2018 ,which intent to replace original CPA 1986.

According to proposed bill the limits of compensation for District forum will be up to Rs 1 crore , for state commission between 1 crore to 10

crore and for National Commission more than 10 crore. As per existing bill of 1986 the limits are upto 20 lakhs , 20 lakh to 1 crore and beyond one crore respectively for District , State and National Commission .

It is curious to know that The Consumer protection Act 1986 originally envisaged District forum pecuniary jurisdiction where the value of the goods or services and the compensation, **if any, claimed** "does not exceed rupees five lacs which was raised to 20 lacs in subsequent amendment.

**In the new Bill the term "and the compensation if any claimed" is missing**. This omission is could certainly lead to significant impact in CPA vs Doctors relations . If this is deliberate then Doctors cases will be limited to District Commission only as no doctor charges fee for services in crores. But if it includes within the meaning of terms that compensation demanded upto 1 crore will fall within purview of District forum , from 1-10 crore in State Commission and more than 10 crore in NC then doctors need to be worried. If compensation claimed is the criterion then there will on a spurt of more and more demands of compensations in 10s of crores.

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