Medical Negligence in Military Hospitals

Dear Editor,

I read with great interest the contemporary issue, "Medical Negligence in Military Hospitals" in MJAFI 2007; 63: 172-4.

The impression gathered after reading the article is that military hospitals do not fall under the purview of the Consumer Protection Act. This position may not be factually correct.

The Supreme Court in its landmark judgement on 13 Nov 1995 concluded that services rendered to a patient by a medical practitioner fall under the purview of the Consumer Protection Act.

The Supreme Court while delivering its judgement arrived at a number of conclusions. The points of interest to us are: –

1. Service rendered at a Government Hospital/Health Centre/Dispensary where no charge whatsoever is made from any person availing the service and all patients (rich or poor) are given free service is outside the purview of the expression 'service' as defined in Section 2(1) (o) of the Act.
2. Service rendered at a Government Hospital/Health Centre/Dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of the expression 'service' as defined in Section 2(1) (o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be 'service'

REPLY

Dear Editor,

We acknowledge the indepth knowledge of law of the responder, he has quoted the highlights of the Supreme Court Judgement of 13 Nov 1995. His concern regarding Consumer Protection Act (CPA) is justified.

There have been decisions in three cases after 1995, where in service officers, retired or serving, have approached the consumer redressal commission/forum but their plea has been rejected on the ground that military hospitals are not covered under the CPA. These are -

- a) Brig X vs Union of India, Appeal No.528/88 in State Consumer

and the recipient a 'consumer' under the Act.

3. Similarly, where, as a part of the condition of service, 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) (o) of the Act.

As military hospitals are authorised to accept non-entitled patients on payment of laid down charges, we would come under the Act as per para 2 above. Interestingly, because of our paying non-entitled patients, all free service for our regular clientele would also fall under the purview of the Act.

The Act may also be applicable to us vide para 3 above where our employer (MOD, GOI) bears the expenses of medical treatment of an employee and his family members dependent on him as a part of the condition of service.

Reference

1. Chauhan K, Perumal SM, Hiwale S, Rajkumar. Medical Negligence in Military Hospitals. Medical Journal Armed Forces India 2007; 63: 172-3.

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Redressal Commission Jabalpur and order dated 23 Jan 2001.

- b) Lt Col Y vs 159 GH. Appeal No 288/2003 in Distt Consumer Redressal Forum, Ferozpur and order dated 27 Nov 2003.
- c) Wg Cdr Z vs Union of India, Complaint No 469/2004/DF-VII in Distt Consumer Disputes Redressal Forum, New Delhi and order dated 03 Jan 2005.

We have already shown our concern in our article, that after the ECHS becomes fully functional, the status of military hospitals may be reviewed by the judiciary/consumer redressal forum.

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