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Ayurvedic Doctors Cannot Prescribe Allopathic Medicines—National Consumer Dispute Redressal Commission Judgement

Purvish M. Parikh[1]

[1] Department of Clinical Hematology, Mahatma Gandhi University of Medical Sciences and Technology, Jaipur, Rajasthan, India

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Address for correspondence Purvish M. Parikh, Department of Clinical Hematology, Mahatma Gandhi University of Medical Sciences and Technology, Jaipur 302022, Rajasthan, India (e-mail: purvish1@gmail.com).

Abstract

We describe the facts of the matter and the court's decision in a case of an Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homeopathy (AYUSH) doctor being found guilty of deficiency of service by prescribing allopathic medicines that were associated with known complications. The case details include the allegation, the defense, and the court's judgement. Details of the concerned acts, circulars, and regulations, as well as court case laws, are described. The regulations allow AYUSH doctors to prescribe allopathic medicines under certain circumstances, which were not adhered to in this case.

Purvish M. Parikh

Keywords

- medicolegal
- AYUSH
- regulations
- negligence
- crosspathy

Introduction

On June 14, 2023, the National Consumer Disputes Redressal Commission (NCDRC) passed an order confirming the decision of the State Consumer Disputes Redressal Commission (SCDRC) and District Consumer Dispute Resolution Forum (DCDRF; Revision Petition No. 1133 Of 2018 & citation (2023) 06 NCDRC CK 0035).[1] These addresses whether a doctor can practice crosspathy, specifically whether an ayurvedic doctor can prescribe allopathic medicines or not. We will discuss the ramifications and finer points of the judgement and related acts, regulations, and case laws.

Facts of the Case

On September 12, 2010, a patient (Mr. Divgijay Sharma, Advocate) first went to an ayurvedic doctor (Dr. Shailender Dhawan, Ayurvedacharya, BAMS, MD [Alt.Med.]) at his skin clinic, Kayakalp Global Skin Clinic. Dr. Dhavan diagnosed Mr. X's condition as "Active Vitiligo" and prescribed several medications including the allopathic medicine, prednisolone 5 mg, 3 tablets to be taken after breakfast and after dinner on Monday and Tuesday every week.[1] This was continued for a total of 9 months (from 12.09.2010 to 18.05.2011).

Subsequently (May 2011), Mr. Digvijay developed herpes zoster (on upper and lower lips, palate, gums, and nose on the right side of the face) and cataract (both eyes).

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Herpes Zoster: Mr. Digvijay consulted Dr. Manoj Jain (MBBS, DVD, MD [skin]) at Vardhman Skin Clinic and Cosmetic Laser Centre, for skin lesions. Dr. Manoj diagnosed it as herpes zoster and admitted Mr. Digvijay at Sehgal Nursing Home, New Delhi (from 16.05.2011 to 20.05.2011). Dr. Manoj prescribed continuation of oral medication till August, 2011 as prescribed by Dr. Manoj Jain.

Cataract: Mr. Digvijay consulted Dr. Ritu Goel (MBBS, MS [Ophthalmology]) and eye surgeon Dr. A.K. Chadha (MBBS, DOMS [Ophthalmology]), for diminished vision, was diagnosed to have cataract in both eyes and subsequently underwent cataract surgery.

Complaint

Mr. Digvijay first filed complaint in DCDRF, Faridabad. The allegation was that herpes zoster and cataract developed because Dr. Shailender Dhawan, Ayurvedacharya, had prescribed allopathic (modern medicine) doctors that he did not have the qualification, training, experience, or authorization to prescribe.

As a result, Mr. Digvijay had to suffer the complications, mental agony, additional medical expenses (about Rs. 150,000s for the treatment of herpes zoster and Rs. 50,000/- for the treatment of cataracts), as well as professional financial loss (about Rs. 500,000/-). Such hazardous condition and threat to life were attributed to the Ayurvedacharya prescribing allopathic medicines without appropriate knowledge and experience.

Defense of Accused

Dr. Shailendra accepted that he had prescribed allopathic medicine (prednisolone; in addition to ayurvedic medicines). Prednisolone was given as oral pulse therapy (15 mg twice a day for 2 days followed by a break of 5 days in weekly cycles). Steroid administration for 9 months was as per the guidelines' article published by Indian Institute of Medical Science dated 19.03.2011. The complainant did not refute anything about the dose of the medication and accepted that he had been explained its use.

He also explained that herpes zoster infection is resurgence of pre-existing chicken pox infection. The virus remains dormant in the nervous ganglion and reactivates under several circumstances, including immune deficiency, diabetes, and stress. While long-term steroid therapy has been known to increase chance of reactivation of herpes zoster, such a risk is low when the steroids are used in intermittent fashion as prescribed to Mr. Digvijay. It is also possible that the herpes zoster reactivation was precipitated by the stress and depression secondary to the skin disease, especially since it had affected his face.

Dr. Shailendra monitored the patient's condition regularly, including relevant blood tests (hemoglobin, complete blood count, and blood sugar levels), all of which remained within normal range during the duration of steroid administration.

He also stated that as a BAMS degree holder, he was also entitled to practice in Allopathic System of Medicines/Modern Science, as per the notification dated 08.04.2002 issued by Director General Health Services, Haryana (it mentions that degree holders of Ayurvedacharya [BAMS]/Kamil-e-tib-o-Jarahat [BUMS] and the equivalent qualification including in second schedule to Indian Medicines Central Council Act, 1970 are competent to use modern technology for example, radiology, ultrasonography, electrocardiogram, etc. in their clinical practice on the basis of their teachings and training as notified already by Central Council of Indian Medicine Notification No.8–5/97-Ay(MM) dated 31.10.1996).[2,3] In addition, notification of Commissioner & Secretary, Health, Medical Education Ayurveda (ISM) Department, Government of Haryana, dated 12.04.2004 confirms the same mentions that institutionalized qualified practitioner of Indian System of Indian Medicine (Ayurveda, Siddha, and Unani) is eligible to practice Indian systems of Indian medicine and modern Medicine including surgery, gynecology, and obstetrics based on their training and teaching, which are part of the syllabus/course of ISM prescribed by Central Council of Indian Medicine after approval of the Government of India.[4] The third supporting evidence quoted was the notification dated 22.04.2008 issued by Ministry of Health & Family Welfare, Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Government of India.[5] Finally his defense referred to the judgment of Supreme Court of India (SCI; in the matter of Martin F D'Souza versus Mohd. Ishaq, [2009] 3 SCC 17) that stated that filing a complaint of medical negligence mandatorily requires an expert opinion, whereas no such expert opinion was sought or filed in this case.[6] Hence, the complaint was wrong and is liable to be dismissed.

Court Order

The DCDRF, Faridabad, and the SCDRC, Haryana, had upheld that the complaint was valid. The NCDRC also confirmed the same giving the following reasons:

SCI has earlier examined the issue regarding prescription of modern allopathic medicines by a practitioner of Indian system of Indian medicine. In the case of Dr. Mukhtiar Chand and Others versus State of Punjab and Others, (1998) 7 SCC 579, SCI had made the legal position clear in paragraph 47 of that judgment. It stated that Section 15 of Medical Council Act, 1956 and Section 17 of Indian Medicine Central Council Act, 1970 allow the AYUSH practitioner to prescribe modern medicines only if he/she is also enrolled on a State Medical Register, within the meaning of 1956 Act.[7,8]

The earlier view of SCI (in Martin F D'Souza versus Mohd. Ishaq, [2009] 3 SCC 17) was reversed in a subsequent judgment [in V. Kishan Rao versus Nikhil Super specialty Hospital and another, (2010) 5 SCC 513].[9] Thus, obtaining an expert opinion is not required for filing a complaint before the consumer courts. This reversal was with the intention of preventing the defeat or dilution of the legislative intent of Consumer Protection Act, 1986.[10]

Dr. Shailendra was registered under Punjab Ayurvedic & Unani Chikkitsha Adhiniyam, 1963 but not under Indian Medical Council Act, 1956. Hence, he was not entitled to prescribe medicines under modern/allopathic system of medicine. A compensation of Rs. 500,000/- awarded by the DCDRF was upheld.

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Discussion

India is a vast country with a population of more than 1.3 billion, the majority living in rural areas. The number of current healthcare professionals, especially those qualified in modern system of medicine (allopathy), is not enough to provide services to all our people. Presence of AYUSH (Indian systems of medicine) professionals are therefore a boon to many. Unfortunately, the challenge is when doctors from one system of medicine start prescribing medication from other systems—something that has been well recognized as deficiency of service by our legal system.

The government of various states and the central government have attempted to address this issue by providing training across systems of medicines and have also brought out circulars (from time to time) that clarify the matter.[2–5,7,11,12]

The central acts of relevance include the Indian Medical Council Act, 1956 and the Indian Medicine Central Council Act, 1970.[2,3,13]

Several states including Madhya Pradesh, Uttar Pradesh, Maharashtra, Himachal Pradesh, Chattisgarh, Karnataka, and Punjab have issued circulars allowing ayurveda practitioners to use allopathic medicines and modes of treatment.[2–5,11,13] This is especially relevant in case of medical emergencies to prevent unnecessary loss of patients' lives. Some examples are acute myocardial infarction, snake bites, consumption of poison, complicated delivery, and poly trauma.

Currently, the AYUSH curriculum, leading to the degree of BAMS, includes teaching of anatomy, physiology, pathology, surgery, gynecology, and forensic medicine. Several teachers from allopathic medicine are also part of the faculty at such teaching institutions. Additional changes in the courses are happening dynamically to address unmet needs. In addition, ayurveda graduate students are posted to allopathic medical centers as part of their internship, strengthening their practical understanding of medical emergencies.

There is also a general perception that while Supreme Court order does not allow ayurveda doctors to dispense allopathic drugs, it has given approval for crosspathy practice to the extent notified by respective state governments. Section 2 (ee) of the Drugs and Cosmetics Rules, 1995, clarifies who is a registered medical practitioner.[14] It refers to a person who is registered or eligible for registration in a medical register of a state meant for the registration of persons practicing the modern scientific system of medicine (excluding the homoeopathy system of medicine). Those declared by a general or special order made by the state government in this regard are also eligible to be considered as registered medical practitioners (as a person practicing the modern scientific system of medicine for the purposes of this Act).

The SCI upheld the validity of Rule 2 (ee) (iii) and the various notifications issued by respective state governments, allowing Ayurveda, Siddha, Unani, and Homoeopathy practitioners to prescribe allopathic medicines.[14] In addition, those healthcare professionals having degrees in integrated medicine can also prescribe allopathic medicines in their respective state(s). Such doctors are considered to have qualification sufficient for them to be registered in the State Medical Register.[15]

In this particular (and many other cases), the judiciary system held the Ayush practitioner guilty of deficiency of service because they prescribed modern (allopathic) medication when they were not registered in the State Medical Register—a moot legal point.

It is important to mention that there is a difference between deficiency of service and medical negligence.[16,17] The distinction is important but not in the scope of this discussion. We want to make sure that the reader is cognizant that the two are different and subject to different laws and regulations.

Coming back to this case, three aspects tug in three different directions. The patient is interested in getting the best treatment and getting relief from his illness. The government is focused on providing legislation and regulations that allow patients to be treated promptly and efficiently across the vast expanse of our country. And the legal system is ensuring that the laws and regulations are followed, keeping mind that everyone is innocent unless proven guilty.

Now let us discuss the "culprit," prednisolone. Oral systemic corticosteroids are recognized as standard of care of vitiligo—an autoimmune disease.[18–20] Long-term use of prednisolone has important implications. In one study involving 602,152 person-years (median of 7.36 years) follow-up, 6,294 cases of herpes zoster occurred among 94,677 patients (incidence of 11.0 per 1,000 person-years).[21] The risk of herpes zoster was 59% higher among those who were new users of corticosteroids ($n = 20{,}048$). Also, the time correlation was unique. Zoster risk was high in the first month after commencing corticosteroids and returned to levels identical to those not using corticosteroids by the third month of use. Prednisolone is also beneficial in the management of herpes zoster.[22] A publication called the Blue Mountains Eye Study involved 3,654 Australians aged 49 years or older (1992–1994), who were re-examined over a period of 10 years.[23] The incidence of posterior subcapsular cataracts and nuclear cataracts is higher with long-term use of steroids. This is especially true for subcapsular cataract if the person is using both inhaled and oral corticosteroids.

But complications of long-term prednisolone can occur irrespective of who prescribes the medication. And their use, in this instance, was as per standard recommended guidelines. So, the issue was only who has prescribed the right drug for the right disease in the right dose for the right duration.

Clearly, there is a need for all stakeholders to come together to find a way forward—including allopathic doctors, AYUSH doctors, legal luminaries, bar council, the Indian Medical Association, and related government departments. The challenges include social, economic, legal, ethical, and moral ramifications.

Conclusion

Indian systems of medicine (AYUSH) practitioners as well as those having degrees in integrated medicine are recognized as qualified to treat patients. Certain states as well as the

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central government have declared that some of them are legally allowed to prescribe allopathic medicines. While upholding the validity of such regulations, acts and circulars, the SCI (and other judicial authorities) have passed several orders that categorically declare that this is permitted only if the concerned healthcare professional is also registered in the respective State Medical Registers.

Conflict of Interest

None declared.

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