

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.6006 of 2016
Date of Decision:- 19.09.2016

Jasvinder Singh

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Wazir Singh, Advocate,
for the petitioner.

Ms.Gaganpreet Kaur, AAG, Haryana.

Ms.Mandeep Madahar, Advocate, for
Mr.Amrit Paul, Advocate,
for respondent No.3.

Ms.Promila Nain, Advocate,
for respondent No.5.

Ms.Madhu, Advocate,
for respondent No.6.

RAKESH KUMAR JAIN, J.

The wife of the petitioner, namely, Poonam, was admitted in Dr. Narayan Dutta Hospital (respondent No.5) on 6.6.2014 for the delivery of child. A male child was born through surgical procedure (cesarean) on 7.6.2014 at 3:30 AM. At the time of delivery, Dr. Madhu Sudhan (respondent No.6) was present. The child was diagnosed with 'Acute Respiratory Problem c/o difficulty in breathing after birth' by the Paediatrician-Consultant (respondent No.6). The petitioner was advised to get his newly born child admitted in some paediatric hospital for his

treatment. He got his son admitted in the hospital of respondent No.6, namely, Madhu Mitta Hospital, Panipat. The son of the petitioner was admitted on 7.6.2014 at 5.00 AM and was discharged on 8.6.2014 at 10.00 AM, while the wife of the petitioner remained admitted in the hospital of respondent No.5. After some time, since the son of the petitioner was not having proper growth and his right hand was not having any movement even after one year of his birth, the petitioner got him examined in the PGIMER, Chandigarh and after his MRI test on 9.6.2015, it was found that the right side brain of the child was either going to be damaged or was already damaged and it is alleged, that the petitioner was informed that the said problem was created at the time of caesarean operation on account of negligence of the doctors. The petitioner had allegedly requested respondents No.5 & 6 for the treatment/medical record of his son. Since the request made by the petitioner was not acceded to by respondents No.5 & 6, he made a representation on 8.3.2016 to respondent No.4. It is alleged that respondent No.4 did not hear the petitioner's grievance, being in connivance with respondents No.5 & 6 and hence, the present petition has been filed in which the petitioner has made a prayer for the issuance of a direction to respondents No.3 & 4 to take a decision on his representation dated 8.3.2016, for providing him the complete medical record of his son and also for directing respondents No.2 to 4 to initiate appropriate action against respondents No.5 & 6 for violating the mandatory provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 [for short 'the Regulations']. He has also relied upon a decision of the Kerala High Court rendered in "**Rajappan Vs. Sree Chitra Tirunal Institute for Medical Sciences & Technology**" 2004 (3) RCR (Civil) 304.

After notice, separate replies on behalf of respondents No.1, 2 & 4, 3 and 5 & 6 have been filed. According to the petitioner, as per Regulation 1.3 of the Regulations, it is mandatory for every physician to maintain medical record of the indoor patient for a period of three years from the date of commencement of the treatment and on any request made by the patient for the said record, it has to be delivered to him within a period of 72 hours. He has also submitted that as per Regulation 7 of the Regulations, in case medical record is either not maintained or there is a refusal to provide the same within the prescribed time, then appropriate action can be initiated by the State Medical Council or the Medical Council of India.

In the reply filed by respondents No.1, 2 & 4, it is averred that after the receipt of representation dated 8.3.2016 by respondent No.4 on 14.3.2016, a committee of Dr. Naveen Suneja, Deputy Civil Surgeon Medical Officer was constituted to inspect/enquire into the issue involved and submit the report to the office of Civil Surgeon regarding which a letter was also issued to the petitioner and respondents No.5 & 6, directing them to appear in the office of Civil Surgeon on 21.4.2016 at 11.00 AM along with their records but neither the petitioner nor respondents No.5 & 6 appeared on the stipulated date, rather respondent No.6 sent the medical record to the office of respondent No.4 on 22.4.2016, which has been forwarded to the petitioner vide letter No. E-VI/CSP/215 dated 29.4.2016. It is further averred that respondent No.4 has no power to take legal action against the private practitioner doctors (Respondents No.5 & 6) as per the Indian Medical Council Act, 1956 but he can hold an enquiry into the alleged negligence for which the State Medical Council or the Medical Council of India has the power to take an appropriate action.

In the reply filed by respondent No.5, factum of the delivery of the male child through surgical procedure (cesarean) and the problem faced by the newly born child is admitted. It is also admitted that the newly born child was admitted in the hospital of respondent No.6 after some time of his birth. It is further averred that at the time of discharge of the wife of the petitioner on 10.6.2014, complete discharge summary was given to her. Since the allegations are basically against respondent No.6, therefore, in his reply it is averred that the petitioner never approached him for the purpose of medical record and he only came to know when the writ petition is filed. It is admitted that as per their record, the child was admitted to the hospital on 7.6.2014 at 5:00 AM and was discharged on 8.6.2014 at 10:00 AM. The discharge slip was given to the petitioner, mentioning the diagnosis, the course of treatment during stay in hospital, investigation reports and further advice. It is further averred that all the relevant documents/records from the date of admission till discharge of the son of the petitioner has been given to him, which are also appended with the reply.

Insofar as reply filed by respondent No.3 is concerned, it is averred therein that the relevant discharge summary and treatment record has already been supplied to the petitioner.

I have heard learned counsel for the parties and perused the record.

The facts are not in dispute and the only issue in this case is as to whether respondent No.5 & 6 are liable for any action for the alleged misconduct as provided in the Regulations?

In order to appreciate the rival contentions, it would be appropriate to refer to the relevant provisions of the Regulations, which are

“1.3 Maintenance of medical records:

1.3.1 Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.

1.3.2 If any request is made for medical records either by the patients/authorized attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the Period of 72 hours.

1.3.3 A Registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical certificate he/she shall always enter the identification marks of the patient and keep a copy of the certificate. He/She shall not omit to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.

1.3.4 Efforts shall be made to computerize medical records for quick retrieval.”

“7. MISCONDUCT: *the following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action.*

7.1 VIOLATION OF THE REGULATIONS:

If he/she commits any violation of these regulations.

7.2 if he/she does not maintain the medical records of his/her indoor patients for a period of three years as per regulation 1.3 and refuses to provide the same within 72 hours when the patient or his/her authorized representative makes a request for it as per the regulation 1.3.2.

7.3 if he/she does not display the registration number accorded to him/her by the State Medical Council or Medical Council Of India in his clinic, prescriptions and certificates etc. issued by him or violates the provisions of regulation 1.4.2.”

The case set up by the petitioner is regarding non-issuance of the medical/hospital report of his son, who was admitted as an indoor patient in the hospital of respondent No.6, which is required by him for his treatment in the PGIMER, Chandigarh. According to the petitioner, the respondents have not supplied the medical records whereas respondent No.6 has attached the medical record of the son of the petitioner with complete details of his admission, investigation, treatment and future course of action. No doubt that the provisions of the Regulations are mandatory and it is incumbent upon the physician to maintain the medical record pertaining to the indoor patient for at least 3 years from the date of commencement of the treatment, in the standard *pro forma*, laid down by the medical council and the physician is also liable to provide the medical records to the patient/authorized attendant or legal authorities within a period of 72 hours. It is also not in dispute that if it is not done then it would be treated as violation of the Regulations as provided under Regulation 7 of the Regulations. The decision in the case of “**Rajappan (Supra)**” is also on the

same analogy. However, in the present case, no action is required to be initiated against respondents No.5 & 6 as it is evident from the record that the medical record of the son of the petitioner has already been given to him and as such his grievance has been redressed.

Thus in view of the aforesaid facts and circumstances, I do not find any reason to further proceed with this matter and hence, the present petition is hereby dismissed.

19.09.2016

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No