

Consumer courts

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If one were to step into a consumer court (more correctly, forum), the chances of bumping into a dermatologist are dim because very few dermatologists are dragged to a consumer forum. It is, however, worthwhile to know about these consumer dispute redressal agencies.

The dispute regarding the applicability of the Consumer Protection Act (CPA) to medical professionals was set to rest following a recent Supreme Court judgment which held that the service rendered by a doctor is a "service" as defined under the CPA. Therefore, any alleged deficiency of service (any shortcoming or fault in the quality of the service) can invite a complaint before a Consumer Forum, subject to certain exceptions. If a doctor renders free services to every patient he attends to (e.g. in a government hospital or a charitable hospital) or even if only a small registration fee is charged, then such services are not amenable to the provisions of the CPA.

There is a three tier system for the settlement of consumer disputes under the Consumer Protection Act:

1. *District Forum:* A District Forum has been established for every district and is empowered to entertain complaints claiming compensation up to Rs. 20,00,000. It has three members: the President (a judicial member, who is a sitting, retired or person qualified to be a District Judge) and two non-judicial

members, one of whom is a woman.

2. *State Commission:* There is a State Commission for every State or Union territory. It is empowered to entertain claims for compensation up to Rs. 1,00,00,000. A State Commission can also entertain appeals or revision application from the respective District Fora. The State Commission also has three members: a President (who is a sitting or retired High Court Judge) and two non-judicial members, one of whom is a woman.
3. *National Commission:* The National Commission sits in New Delhi. It can entertain claims for compensation above Rs. 1,00,00,000. It also entertains appeals and revision applications from the State Commissions. The National Commission has five members including the President, who is a sitting or retired Supreme Court Judge. Appeals from the National commission lie before the Supreme Court of India.

These consumer disputes redressal agencies are quasi-judicial agencies (which means that in the true sense they are not courts) which have powers to award compensation for any loss or injury suffered by the patient due to the attending doctor's negligence or deficiency of service. The purpose of compensation is not to punish the doctor, but to put the patient or his legal representatives (in case the patient is dead) in

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the financial position in which they were prior to the loss or injury. For example, if a patient can prove that his prolonged hospitalization, which has led to loss of earnings, was due to the doctor's negligence, then he can be compensated for the loss of earnings as well as for mental agony, etc.

Generally, the onus of proving negligence is on the complainant (one who files the complaint) and not on the doctor to disprove it. Once the complaint is filed, the Forum decides whether the complaint is maintainable before it. If it is, it issues a notice to the doctor ("the opposite party"), who is generally required to reply within 30 days. This is called as a written statement or version of the opposite party. The complainant is then allowed to file a rejoinder. Cross-examination is permitted in appropriate cases and affidavits can be filed. Whenever necessary, the forum may summon an expert (someone who has specialized skill or knowledge on the subject matter of the complaint) to give evidence. It is not always necessary to engage the services of a lawyer since the relaxation from technical and legalistic procedures makes it conducive to argue one's own case. However, it is always advisable to seek the advice of a legal advisor.

Earlier, Court fees were not payable at the time of

filing the complaint with the result that patients had little to lose if they lost the case. This encouraged speculative litigation. Recent amendments in the Consumer Protection Act provide for payment of fees at the time of filing the complaint with the hope that only genuine complaints are filed. To deter frivolous or vexatious complaints, the Consumer Protection Act provides for imposition of a penalty up to Rs. 10,000. Needless to say, this section has not been an effective deterrent.

The consumer disputes redressal agencies can punish the offender for non-compliance of their orders. This punishment can include imprisonment and imposition of a fine. Therefore, the orders of the consumer courts cannot be taken lightly.

The Consumer Protection Act is aimed at speedy disposal of disputes. Unfortunately, this takes years!

The contents in this article are for creating awareness about litigation involving medical professionals and the contents are not in the nature of legal advice. A reference should always be made to the latest judgements and laws on the subject as laws are amended or repealed or new laws come into existence from time to time. It is advisable to seek legal advice in specific cases. The above article is an extract from the book 'Dermatology and law' by the same author.