

Holding Healthcare Providers Accountable: **Regulating Practitioners Through Medical Councils**



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Executive Summary







Executive Summary

Doctors in India are regulated by professional bodies at the state level through State Medical Councils (“SMCs”) and at the central level through the National Medical Commission (“NMC”). These authorities are obligated to maintain registers of qualified doctors and discipline them for unprofessional conduct. Based on an analysis of 30 SMC laws, information obtained through 94 RTI applications, and observations from 33 cases from Indian constitutional courts, our research suggests that these professional bodies are failing to perform their duties at several levels. We first examine the structure and functioning of the NMC, and we then proceed to examine the SMCs and their performance over the years.

Registration of Medical Practitioners

The National Medical Commission Act 2019 (“NMC Act 2019”) establishes four autonomous boards, one in particular being the Ethics and Medical Registration Board (“EMRB”). This Board is responsible for registering and regulating medical practitioners. The EMRB is mandated to maintain national registers of practitioners, make regulations to govern their professional conduct, and exercise appellate jurisdiction over the decisions taken by SMCs. However, the EMRB is currently operating with only two out of its sanctioned strength of five members, in addition to the position of President of the Board lying vacant.

Our research suggests that the registration system is uncoordinated and does not accurately reflect the number of doctors. There are stark discrepancies between the number of medical practitioners registered and listed in the Indian Medical Register and the numbers obtained through RTI applications in

several states. Further, the EMRB is currently operating with only two out of its sanctioned strength of five members, in addition to the position of President of the Board lying vacant. Meanwhile, the process for setting up the National Register began four years after the enactment of the NMC Act 2019, and even now, the delay persists as the EMRB is yet to set up the web portal for practitioners to apply for registration.

The NMC Registration of Medical Practitioners and License to Practice Medicine Regulations 2023 made by the National Medical Commission also leave significant gaps. There are several ambiguities in the implementation of the provisions due to their drafting.

Most SMC laws follow a common structure. They set up the SMC, provide for the appointment of the Registrar, lay down the registration procedure for doctors, and empower the Councils to refuse, suspend, or cancel registrations. Many of these laws establish bodies representing the interests of doctors, and none of the SMCs have any representation from patients’ groups, local bodies, private sector associations like chambers of commerce, or consumer groups.

Several SMC laws remain unenforced. Four states do not have functional SMCs and several operational SMCs do not maintain or regularly update records of registration. Notably, we observed stark discrepancies between the number of RMPs recorded in the Indian Medical Register and the number obtained from SMCs through RTI applications.

Disciplinary Action Against Registered Medical Practitioners

The SMC's role in disciplining registered medical practitioners ("RMPs") for misconduct is important because the alternative judicial remedies are time-consuming and expensive for patients. All the SMC Acts confer wide powers on the council to take disciplinary action, but the legislation of only seven states/union territories permit an aggrieved person to file a complaint against an RMP for professional misconduct. While all SMC laws empower the SMC to remove an RMP from the register and impose fines, some permit the SMC to award imprisonment as well. Some SMC Acts also empower the SMC to award compensation to the aggrieved.

However, SMCs fail to perform their adjudicatory functions effectively. Very few complaints are instituted, and even when instituted, the most common disciplinary actions are warnings or mandating attendance of continuing medical education (CME), with very few instances of an RMP being removed from the register either temporarily or permanently. From information obtained through two SMCs - Karnataka and Uttarakhand - we observe similar trends. SMCs prefer issuing warnings over all other disciplinary measures. Occasionally, they direct that the practitioner provide affidavits or undertake CME, and they rarely order suspension of registration. Interestingly, these two SMCs sanctioned clinical establishments in some instances as well, even when they are not legally empowered to govern establishments.

Moreover, the procedure for appealing orders of SMCs is ambiguous. The NMC Act 2019 and several SMC Acts establish parallel appellate mechanisms

with no clarity about which mechanism would prevail over the others. The NMC Act 2019 establishes that the first appeal would lie before the EMRB and the second appeal before the NMC. On the other hand, State Acts allow appeals against decisions of the SMC before the state government. As medical practitioners may practise in more than one state, stipulating the State Government as an appellate authority may not be suitable.

The NMC Professional Conduct Regulations 2023 (currently in abeyance) indicate that states are expected to establish an online grievance redressal system. However, the goal of an accessible and effective grievance redressal mechanism through SMCs is distant. Four SMCs do not have operational websites. Seventeen SMC websites provide no information about complaint processes. Only four SMCs have an online portal for filing complaints.

Recommendations

We recommend that the NMC Act and regulations made under it as well as the various SMC Acts be amended to clarify existing ambiguities, that all medical councils maintain operational websites and publish their respective State Medical Registers in a machine-readable and searchable format, and mandatorily provide an online mechanism for the public to file complaints against RMPs. Additionally, a live dashboard must be established and maintained real-time to track the number of complaints registered and disposed of by each SMC. Members of SMCs should be sensitised and trained on the law and practice of disciplinary proceedings to ensure an equitable and fair procedure.

Introduction







Introduction

It has frequently been highlighted over the years that India has a ‘quack problem’, that is, healthcare services are being provided by individuals without the requisite medical qualifications.¹ As per a 2016 WHO report, 57.3% allopathic doctors in India did not have a medical qualification and in rural areas, only 19% of doctors possessed a medical degree.²

Medical practice without the appropriate qualifications is a threat to individual life and a social risk. Both the criminal law as well as professional regulation in India attempt to deal with this. Section 304A of the Indian Penal Code, 1860 punishes persons for causing death through rash or negligent acts. It is under this provision that healthcare practitioners have been convicted for practising medicine in an unauthorised manner, both at district courts as well as at the High Courts.³ Examples of this include practising without being registered, not having a registered clinic, or practising allopathy while possessing a degree only in Ayurveda.⁴ When a person presents themselves as a doctor and agrees to treat a patient, there is an implied promise on the part of the doctor that they possess the necessary competence, knowledge and skill of an average doctor within that field of medicine. When a person claims to

have a particular medical qualification, there is also an implied promise by professional regulatory bodies that the person in question does in fact possess such qualification. Ensuring that only qualified medical practitioners practise medicine is a vital function that professional regulatory bodies in the field of healthcare must fulfil.

In addition to this, professional regulatory bodies are mandated to govern the professional conduct of medical practitioners and must be equipped to take action against practitioners for misconduct. Examples of such misconduct include soliciting business through advertisements, signing on false medical certificates, or claiming to have knowledge of a medical field in which the person is not trained. While some of this behaviour can also be addressed through consumer fora, where individual complainants can bring actions against erring medical practitioners, it is the primary responsibility of the regulatory bodies to proactively sanction such misconduct. However, sanctions by state-level authorities have been far and few in between, and the central-level professional regulatory authority until 2019 – the Medical Council of India – has had a history of mismanagement⁵ and unjustified orders of sanction against doctors⁶.

¹ Ishita Mishra, ‘The Spin Doctors: India’s Quacks Endanger Lives, but Are “God” to Their Patients’ *The Hindu* (31 March 2018) <<https://www.thehindu.com/sci-tech/health/the-spin-doctors-indias-quacks-imperil-lives-but-are-god-to-their-patients/article23398980.ece>> accessed 22 June 2023; Priyanka Pulla, ‘Are India’s Quacks the Answer to Its Shortage of Doctors?’ (2016) 352 *BMJ* i291 <<https://www.bmj.com/content/352/bmj.i291.full>> accessed 22 June 2023; Pallavi Pundir, ‘Fake Degrees, School Dropouts, Unqualified Doctors: India Has a Problem of Quacks’ (Vice, 16 September 2020) <<https://www.vice.com/en/article/m7jyqq/fake-degrees-school-dropouts-unqualified-doctors-india-has-a-problem-of-quacks>> accessed 22 June 2023.

² Sudhir Anand and Victoria Fan, *The Health Workforce in India* (2016) World Health Organization Human Resources for Health Observer Series No. 16 <<https://apps.who.int/iris/handle/10665/250369>> accessed 15 June 2023.

³ See for instance, *Ravinder Ram Chander Banshi v State of NCT of Delhi* 2014/DHC/1817. For more cases, see the report ‘Consumer, Civil, and Criminal Mechanisms’ in this series.

⁴ See the report ‘Consumer, Civil, and Criminal Mechanisms’ in this series.

⁵ Ninety-second Report of the Department-related Parliamentary Standing Committee on Health and Family Welfare, ‘The Functioning of Medical Council of India’ (8 March 2016) http://www.academics-india.com/Parl_Panel_report_on_MCI.pdf accessed 15 September 2023.

⁶ See for instance *Dr Pramod Batra v Medical Council of India* 2023/DHC/004340, where the MCI order suspending a doctor’s registration for three months on account of falsifying medical records was set aside by the Delhi High Court. The court noted that the MCI had sought to bring the charge of falsifying medical records simply to justify the suspension, as no medical negligence had been proven. Additionally, the MCI order did not provide any details about either the records that were found to be falsified or if the doctor had been given an opportunity to respond to this allegation.

In India, the National Medical Commission (“**NMC**”) and the State Medical Councils (“**SMCs**”) are entrusted with the duty to ensure that only qualified medical practitioners are allowed to practise in the country.⁷ These authorities have also been empowered to take action against quacks, and investigate and punish doctors who are found to have committed unethical acts or medical malpractice. They regulate individual medical practitioners, as opposed to clinical establishments.

Given the importance of their role, we undertook to study the functioning of the NMC and SMCs by tracking the implementation of the Acts under which they operate. In particular, we sought to answer the following questions:

- Have these authorities been set up and members appointed in accordance with the law?
- How regularly do SMCs update their registers of medical practitioners and their qualifications?
- How many complaints against medical practitioners do SMCs receive, and what are the grounds of complaints alleged?
- What kind of sanctions do SMCs impose on medical practitioners who are held liable for professional misconduct?

To answer these questions, we studied the National Medical Commission Act, 2019 (“**NMC Act 2019**”) as well as all State laws on SMCs (“**SMC laws**”) in detail and sought information on their implementation by filing applications under the Right to Information Act, 2005 (“**RTI**”). We also relied on the operational websites of SMCs to gather further details.

⁷ National Medical Commission Act 2019 (NMC Act 2019) s 34. For state laws, see for instance, Kerala State Medical Practitioners Act 2021, s 36; Punjab Medical Registration Act 1916, s 13; Meghalaya Medical Council Act 1987, s 13.

Methodology







Methodology

We filed 94 applications under the RTI Act 2005 with the NMC, the SMCs, the Union Ministry of Health and Family Welfare and State Governments to request information regarding the implementation of the NMC Act 2019 and the SMC laws. Jammu and Kashmir has two separate Medical Councils even though both are governed by the same Act. Hence, the report refers to 31 SMCs and 30 SMC Acts.

While some State governments and SMCs have refused to share information on either procedural grounds or for the reason that the details include personal information of medical practitioners, others have shared incomplete or aggregated information. However, a few states/SMCs have shared detailed and useful information. Further details about the lifecycle of each RTI application can be found in the RTI Tracker sheet provided on our website [here](#).

National Medical Commission

We filed an application with the NMC to seek the following information:

- Current composition and vacancies in the NMC and the Ethics and Medical Registration Board (EMRB)
- A State-wise breakdown of the number of original complaints and grievances received by the EMRB to date under section 30(2) of the NMC Act against a registered medical practitioner in states where no State Medical Councils have been established
- Number of appeals to date filed before the EMRB against the decisions of SMCs and their respective outcomes
- Number of second appeals to date filed before the NMC against the decision of the EMRB and their respective outcomes

In response, we received only partial information from both the NMC and the Department of Health & Family Welfare to which the application had been transferred. Further information about the responses or lack thereof can be found in the RTI Tracker Sheet.

State Medical Councils

We filed two batches of applications with thirty-one SMCs (including an application each for the Jammu and Srinagar offices) to seek the following information:

- Current composition and vacancies in SMCs
- Number of registered medical practitioners in the State
- Number of complaints received against medical practitioners from 2002 [i.e. the year in which the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations were introduced] to date, the grounds for such complaints, as well as details of filing and disposal
- Number of appeals filed against the decisions of SMCs and their respective outcomes
- Number of instances where *suo motu* action was taken by SMCs
- Number of times when the State government has taken action against SMCs
- Minutes of all meetings held by SMCs in the last 5 years

The RTI Tracker Sheet lists the status of each application, including whether the authorities have replied and the kind of reply we have received.

We filed appeals with only those SMCs who rejected our applications on procedural grounds - Kerala, Maharashtra, Rajasthan and Tamil Nadu. In order to freeze our dataset for analysis, no appeals were

filed for responses received after 19 December 2023. From the responses we received from SMCs regarding the minutes of their meeting, we appealed to two SMCs - Karnataka and Punjab - on the basis that we may receive a favourable response from the appellate authorities.

State Governments (Health Departments)

In order to supplement the information received from the SMCs, we filed 30 applications with the Health Departments of each State (including a single application for Jammu and Kashmir) to seek the following information:

- Details of the appeals filed before the State Government against the decision of the SMC from 2002 to date and their respective outcomes
- Details of instances where the State Government has exercised control and taken action against the State Medical Council, its President or Vice-President under the Act due to failure to implement the provisions of the Act

The RTI Tracker Sheet lists the status of each application, including whether the authorities have replied and the kind of reply we have received.

We filed appeals with Jammu and Kashmir, Sikkim, and Tamil Nadu.

Judgments

From the database of cases we analysed for our report on 'Consumer, Civil, and Criminal Mechanisms', we noted 33 cases where the court

adjudicated matters either in the first instance or as an appellate authority over the Medical Council of India or an SMC. Consequently, we included these cases in this report for further examination. Accordingly, we examined those 33 cases in brief for the purpose of this report.

Limitations

- Given the number of SMCs and State governments that either failed to reply or refused to share information for various reasons, our analysis is limited in terms of its range.
- There is limited information on the functioning of the NMC, since it was constituted only on 24 September 2019.
- Where information has been shared, the data is reliant on the quality and accuracy of the information shared by the Public Information Officers. However, we have observed that we have occasionally received incomplete or inaccurate information from the Public Information Officer. For instance, even though the reply from the Uttar Pradesh SMC stated that the composition of the SMC is not available with the authority, the details of the same have been displayed on the official website of the authority .
- Figures for data points may not be comparable across SMCs due to differences in regulatory frameworks, regional disparities in the number of medical professionals and capacity of authorities, and the inconsistencies in record-keeping across states and union territories.

⁸ 'Members of Medical Council' (Uttar Pradesh Medical Council) <<https://www.upmedicalcouncil.org/Member.aspx>> accessed 27 June 2023.

How are SMCs Regulated?







How are SMCs Regulated?

Regulatory Authorities

National Medical Commission

The constitution of a National Medical Commission (“NMC”) was proposed⁹ as an alternative to the erstwhile Medical Council of India (“MCI”) in light of several allegations of inefficiency and corruption against the MCI.¹⁰ It was constituted on 24 September 2019.¹¹

In addition to the establishment of the NMC, the National Medical Commission Act, 2019 (“NMC Act”) constitutes a Medical Advisory Council, through which States and Union Territories can inform policy on medical education and training.¹²

Section 4 of the NMC Act 2019 provides for the composition of the National Commission:

Table 4.1: Qualifications of members of the National Medical Commission

Nature of office	Who can be such a member? (As per the NMC Act 2019)
Chairperson	<ol style="list-style-type: none"> 1. A medical professional of outstanding ability, proven administrative capacity and integrity, 2. possessing a postgraduate degree in any discipline of medical sciences from any University, and 3. having experience of at least 20 years in the field of medical sciences, and they should have been a leader in medical education for at least 10 years
10 ex-officio members	These members include presidents of the autonomous boards established under the NMC Act 2019, directors of various medical institutes, the Director-General of the Directorate General of Health Services, and a representative from the Union Ministry of Health and Family Welfare.
22 part-time members	<ol style="list-style-type: none"> 1. 10 nominees of states and union territories from the Medical Advisory Council who are vice-chancellors of health universities and are appointed on a rotational basis; 2. 9 nominees of states and union territories from the Medical Advisory Council who are elected members of their respective State or Union Territory Medical Councils; and 3. 3 persons who must have special knowledge and professional experiences in areas including management, law, medical ethics, health research, consumer or patient rights advocacy, science and technology and economics.

⁹ Niti Aayog, *A Preliminary Report of the Committee on the Reform of the Indian Medical Council Act, 1956* (2016) <<https://associationdnbdoctors.com/wp-content/uploads/2020/07/NITI-AYOG-for-merger.pdf>> accessed 20 August 2023; ‘States approve proposal to replace Medical Council of India’ *The Hindu* (New Delhi, 9 September 2016) <<https://www.thehindu.com/news/national/States-approve-proposal-to-replace-Medical-Council-of-India/article14628813.ece>> accessed 20 August 2023.

¹⁰ Ninety-second Report of the Department-related Parliamentary Standing Committee on Health and Family Welfare, ‘The Functioning of Medical Council of India’ (8 March 2016) http://www.academics-india.com/Parl_Panel_report_on_MCI.pdf accessed 15 September 2023; Rema Nagarajan, ‘Two decades of attempts to cleanse medical education and its regulator the MCI’ *The Times of India* (16 March 2019) <<https://timesofindia.indiatimes.com/blogs/staying-alive/two-decades-of-attempts-to-cleanse-medical-education-and-its-regulator-the-mci/>> accessed 20 August 2023.

¹¹ Notification for Constitution of National Medical Commission, Notification No. S.O. 3260(E), Department of Health and Family Welfare (24 September 2020) <<http://www.simadnh.org/images/userFiles/221943.pdf>> accessed 20 September 2023.

¹² NMC Act 2019, s 12(1).

In our RTI application, we asked the NMC about its composition and any vacancies, and the Commission responded by noting that the information is available on their website. A review of the official NMC website¹³ shows that

- 2 positions in the NMC continue to lie vacant - one member, and the President of the Ethics and Medical Registration Board.
- While the names of the members have been listed, the webpage does not provide any details regarding their professional qualifications. The curriculum vitae of members have not been uploaded.

Ethics and Medical Registration Board

A core aspect of the NMC Act has been the establishment of four Autonomous Boards:

1. the Under-Graduate Medical Education Board;
2. the Post-Graduate Medical Education Board;
3. the Medical Assessment and Rating Board; and
4. the Ethics and Medical Registration Board (“EMRB”).

These boards remain under the overall supervision of the NMC and perform functions as set out in the NMC Act. We have analysed only the composition, functions and practices of the EMRB, because this body is responsible for registering and regulating medical practitioners, the two issues that we are primarily concerned with for the purposes of this report.

In general, the EMRB is mandated to perform the following functions¹⁴:

1. Maintain two National Registers of all licensed medical practitioners and community health providers respectively;
2. Exercise appellate jurisdiction with respect to the actions taken by an SMC;
3. Make regulations to govern the professional conduct of medical practitioners; and
4. Ensure regular interaction with SMCs and ensure compliance with codes of professional and ethical conduct when the SMC is empowered to take disciplinary actions against medical professionals.

The EMRB is constituted by the Central Government as an autonomous board under the overall supervision of the NMC.¹⁵ The NMC Act 2019 as well as the National Medical Commission, Autonomous Boards (Manner of Appointment of Fourth Member and the Salary, Allowances and Terms and Conditions of Service, and Declaration of Assets, Professional and Commercial Engagements of President and Members) Rules 2019 prescribe the qualifications for the five members of the Board.

¹³ ‘Members of the National Medical Commission’ (*National Medical Commission*) <<https://www.nmc.org.in/about-nmc/members-of-the-nmc/>> accessed 4 September 2023.

¹⁴ NMC Act 2019, ss 27, 31(1) and 31(8). The NMC is empowered to make regulations to regulate the manner of functioning of the EMRB. See NMC Act 2019, s 57(2)(f).

¹⁵ NMC Act 2019, s 16.

Table 4.2: Qualifications of the members of the Ethics and Medical Registration Board

Nature of position held in the EMRB	Qualifications
President	<p>The President, 1 whole-time member and 1 part-time member must be persons</p> <ol style="list-style-type: none"> 1. of outstanding ability, proven administrative capacity and integrity, 2. possessing a postgraduate degree in any discipline of medical sciences, and 3. having experience of at least 15 years in such a field, out of which at least 7 years shall be as a leader in the area of medical education, public health, community medicine or health research.
2 whole-time members	<p>The second whole-time member shall be</p> <ol style="list-style-type: none"> 1. a person of outstanding ability who has demonstrated public record of work on medical ethics, or 2. a person of outstanding ability possessing a postgraduate degree in any of the disciplines of quality assurance, public health, law or patient advocacy from any University and having at least 15 years' experience in such field, out of which at least 7 years shall be as a leader.
2 part-time members	<p>The second part-time member shall be elected from the State Medical Council as per the National Medical Commission, Autonomous Boards (Manner of Appointment of Fourth Member and the Salary, Allowances and Terms and Conditions of Service, and Declaration of Assets, Professional and Commercial Engagements of President and Members) Rules, 2019.</p>

In our RTI application, we asked the NMC about the composition of the EMRB as well as any existing vacancies, and the Commission responded that the details are available on its website. According to the official NMC website,¹⁶ there appear to be only 2 whole-time members out of the prescribed 5 members who continue to hold office. The seats of one member and the President continue to be vacant, and another member is noted to have completed his tenure in late 2022 but no replacement appears

to have been finalized. Notably, the necessity of the Board being a five-member body was underscored by the Parliamentary Standing Committee on Health and Family Welfare in 2018.¹⁷

¹⁶ 'Ethics and Medical Registration Board' (National Medical Commission) <<https://www.nmc.org.in/autonomous-boards/ethics-medical-registration-board/>> accessed 29 September 2023.

¹⁷ One Hundred Ninth Report of Department-related Parliamentary Standing Committee on Health and Family Welfare, 'The National Commission Bill, 2017' (20 March 2018) [4.17.4] <https://prsindia.org/files/bills_acts/bills_parliament/2017/SCR-%20National%20Medical%20Commission%20Bill,%202017.pdf> accessed 1 October 2023.

State Medical Councils

The SMC laws have been enacted by each State to regulate medical practitioners and to have one Medical Register of all qualified medical practitioners for the entire state. Most SMC laws have a common structure. They invariably set up an SMC and provide for the appointment of a Registrar who is responsible for maintaining and updating the register of qualified medical practitioners in the State. The Acts lay down the procedure for registering with the Council, and empower the Councils to refuse, suspend or cancel registration if the medical practitioner is found to have violated the law. State Councils may be entrusted with the power to call for information from medical colleges to monitor the quality of teaching and standard of medical examination, and they have also been called upon to give expert opinion in judicial proceedings where medical malpractice has been alleged.

As a general practice, an SMC has representation from registered medical practitioners, deans and teaching staff of state-owned medical universities and colleges, Director of the State's health services and other ex-officio members from the State government. A few States also include representation from the State branch of the Indian Medical Association. Notably, no SMC includes any representation from local bodies, private sector associations like chambers of commerce, consumer groups or patients' groups. In order to track the establishment and composition of the SMCs, we asked in our RTI applications for details about the composition of the SMCs and any vacancies therein, if any. Additionally, we referred to all the operational websites of SMCs for corroborating the RTI responses.

- Four states have either no operational SMCs or have not provided information about their composition - Meghalaya, Madhya Pradesh, Jharkhand, Nagaland. These SMCs either do not have a website of their own, or they have not published their composition on their website.
- The composition of two SMCs does not adhere to their respective Acts - Jammu and Kashmir, and Uttarakhand.
- Delhi and Telangana SMCs have reported two and five vacancies each, and both have noted that the process of filling these vacancies has begun. However, their websites indicate that these vacancies have not been filled yet, or these new members have not been listed yet.
- Four SMCs did not provide the information requested - Goa, Himachal Pradesh, Karnataka and Manipur. These SMCs have responded with details about their administrative staff or Executive Committee but not their own composition. However, Goa and Karnataka SMCs have provided their composition on their respective websites. The website of Himachal Pradesh SMC does not list its composition, and Manipur SMC has no website of its own.
- Two SMCs provided only the number of members they have - Arunachal Pradesh and Gujarat. These numbers do correspond to the number of members listed on their respective websites.

¹⁸ 'Medical Negligence: Police Rely on State Medical Council's Opinion in Absence of Law' *ET Healthworld* (17 February 2023) <<https://health.economicstimes.indiatimes.com/news/policy/medical-negligence-police-rely-on-state-medical-councils-opinion-in-absence-of-law/98010201>> accessed 27 June 2023.

¹⁹ This includes states like Nagaland, Madhya Pradesh, Jharkhand, Manipur, Bihar, Chhattisgarh, Odisha and West Bengal.

²⁰ Gayatri Mann, 'Issues for Consideration: The National Medical Commission Bill, 2019' (*PRS Legislative Research*, 23 July 2019) <prsindia.org/billtrack/prs-products/issues-for-consideration-3292> accessed 27 June 2023.

Notably, no SMC includes any representation from local bodies, private sector associations like chambers of commerce, consumer groups or patients' groups.

Key Takeaways

The EMRB functioning with only 2 members is a matter of serious concern, particularly in light of the Board's responsibility to hear appeals from decisions of SMCs as well as adjudicate cases where the SMC has not been formed. The position of its President remaining vacant means that the Board is left unrepresented in the NMC and the Medical Advisory Council.

It is alarming to note that several states have not established their respective SMCs yet. Even if they have, it is concerning that they are not transparent about the constitution of the SMC.

It is equally concerning to note that the websites of several SMCs simply do not publish details about their composition.

Depending on the positions in the SMC that are either vacant or not filled as per the concerned Act, the functioning of the Council may be impeded.



Regulation Through Registration

The registration of medical practitioners is the most important mechanism for ensuring that only appropriately qualified persons practise medicine. The NMC Act 2019 bars all unregistered persons from practising medicine and several SMC laws penalise unregistered persons who falsely represent themselves to be registered medical practitioners. Being listed in the national and state registers indicates that the medical practitioner is adequately qualified to practise medicine.

In light of the importance of the register as an accountability mechanism, it is imperative that any sanctions imposed on medical practitioners are also reflected in the register. However, the legitimacy of such registers themselves may be called into question if they are not maintained properly or if there are discrepancies in official numbers. Several doctors listed in the Indian Medical Register set up under the Indian Medical Council Act, 1956 (“**IMC Act 1956**”) and the State Registers have reportedly passed away, retired from practise, or never practised, but their names remain on the registers.

Section 31 of the NMC Act 2019 provides for the maintenance of a National Register by the EMRB. This Register is to be synchronised electronically with State Registers so that changes in one register can be reflected in the other. Four years after the Act entered into force, the EMRB has still not created this National Register.

Earlier, as per the IMC Act 1956, practitioners could file applications to either the SMC or the MCI for registration. The forum that processes and accepts the application would then notify the other to enter the RMP’s name in their register. However, with the NMC Act 2019 currently in force, applications for registration can be made only to SMCs. Presently, as per the Registration of Medical Practitioners and Licence to Practice Medicine Regulations, 2023 (“**NMC Registration Regulations**”), the process for registration for the licence to practice medicine requires the following :

1. The eligible person shall apply through the web portal of the EMRB to one or more states for registration.
2. The application shall then be referred to the respective SMCs for consideration.
3. The SMC(s) concerned shall consider the application, and if satisfied, grant the licence to practise medicine in their respective States. The licence would be valid for five years.
4. Once the SMC has approved the application, it must be reflected in both the National Register as well as the concerned State Register(s).

Importantly, as of August 2023, the EMRB is yet to set up the web portal for registration.

²¹ NMC Act 2019, s 34.

²² Bengal Medical Act 1914, s 29; Tamil Nadu Medical Registration Act 1914, s 23; Bihar and Orissa Medical Act 1916, s 29; Punjab Medical Registration Act 1916, s 23; United Provinces Medical Act 1917, s 30; Kerala State Medical Practitioners Act 2021, s 40.

²³ Bhavin Jankharia, ‘We don’t even know how many doctors currently practice in India’ *The Times of India* (11 January 2022) <<https://timesofindia.indiatimes.com/blogs/voices/we-dont-even-know-how-many-doctors-currently-practice-in-india/>> accessed 10 September 2023.

²⁴ Indian Medical Council Act 1956 (IMC Act 1956) s 23.

²⁵ Registration of Medical Practitioners and Licence to Practice Medicine Regulations 2023, reg 6.

²⁶ ‘Ethics and Medical Registration Board’ (National Medical Commission) <<https://www.nmc.org.in/MCIRest/open/getDocument?path=/Documents/Public/Portal/LatestNews/Advisory%20Dt%2009.08.2023.pdf>>.

Registered Medical Practitioners in India - Statistics

In our RTI applications, we had requested SMCs to provide the number of registered medical practitioners (“RMPs”) in their respective states. We then compared these with the numbers listed in the Indian Medical Register (“IMR”) as published on the official website of the NMC. Though the IMR on the website is updated regularly, its heading states that the data has only been updated till 2021. Importantly, until the National Medical Register is operationalised, the process under the IMC Act, 1956 presumably remains in force. Under this, as per IMC Act 1956, the IMR is not updated automatically, and the SMCs have to send details of any changes in the updated state registers periodically.

We received replies from 13 SMCs till April 2023, and a comparison of the numbers of registered practitioners received from these 13 RTI replies and the corresponding IMR records reveals that

- With the exception of Arunachal Pradesh Medical Council, all the other 12 SMCs reported higher numbers of RMPs in RTI replies as compared to the IMR numbers for the corresponding SMCs. For instance, while the IMR records that Manipur has 3 RMPs, the Manipur Medical Council reported through its RTI reply that it has 4179 practitioners.
- Amongst the other 25 SMCs whose data is stored in the IMR, there are several Councils which no longer exist, and it is not clear if the numbers recorded by these non-existent Councils would be subsumed with the corresponding operational Council.

²⁷ 'Indian Medical Register' (National Medical Commission) <<https://www.nmc.org.in/information-desk/indian-medical-register/>> accessed 22 June 2023. The Indian Medical Register had been set up under the IMC Act 1956.

²⁸ The webpage mentions “Note: This data is being updated.” See 'Indian Medical Register' (National Medical Commission) <<https://www.nmc.org.in/information-desk/indian-medical-register/>> accessed 22 June 2023.

²⁹ IMC Act 1956, s 22. See also Medical Council of India Regulations 2000, part XI(2).

³⁰ See for instance, Bhopal Medical Council, Chandigarh Medical Council, Mysore Medical Council, Mahakoshal Medical Council and Vidharba Medical Council.

Table 4.3: State-wise number of registered medical practitioners as of 14 September 2023

State Medical Councils	Registered Medical Practitioners (as per the Indian Medical Register till 2021)	Registered Medical Practitioners (as per RTI replies)
Andhra Pradesh Medical Council	93325	No reply received
Arunachal Pradesh Medical Council	1712 (exclusive of 2021 data)	1243
Assam Medical Council	25160	No reply received
Bhopal Medical Council	5	-
Bihar Medical Council	47028	No reply received
Bombay Medical Council	14539	-
Chandigarh Medical Council	0	-
Chattisgarh Medical Council	10723	No reply received
Delhi Medical Council	30944 (exclusive of 2021 data)	78243
Goa Medical Council	4023	4908
Gujarat Medical Council	78639	81761
Haryana Medical Council	16500	No reply received
Himachal Pradesh Medical Council	3632	6231
Hyderabad Medical Council	12157	No reply received
Jammu & Kashmir Medical Council	18252	18534
Jharkhand Medical Council	7944	8191
Karnataka Medical Council	131252 (exclusive of 2021 data)	156083
Madhya Pradesh Medical Council	42102	"Available in public domain"
Madras Medical Council	17769	-
Mahakoshal Medical Council	32	-
Maharashtra Medical Council	183373	No reply received
Manipur Medical Council	3	4179
Mizoram Medical Council	156	No reply received
Mysore Medical Council	8374	-
Nagaland Medical Council	137	1259

State Medical Councils	Registered Medical Practitioners (as per the Indian Medical Register till 2021)	Registered Medical Practitioners (as per RTI replies)
Orissa Council of Medical Registration	24337	No reply received
Pondicherry Medical Council	0	No reply received
Punjab Medical Council	53189	No reply received
Rajasthan Medical Council	49242	No reply received
Sikkim Medical Council	1418	No reply received
Tamil Nadu Medical Council	126194	No reply received
Telangana State Medical Council	7968	Provisional - 22941 MBBS - 18670 Additional qualifications - 12625
Travancore Cochin Medical Council, Trivandrum	67098	No reply received
Tripura State Medical Council	1941	No reply received
Uttar Pradesh Medical Council	93563	No reply received
Uttarakhand Medical Council	9673	12885
Vidharba Medical Council	1333	-
West Bengal Medical Council	78265	No reply received
Medical Council of India	52400	-
Total No. of Medical Councils = 40 (as per the IMR)	Total No. of Medical Practitioners as per the IMR = 1325338	

Ambiguities in the registration process

The difficulty in tracking the number of RMPs across the country is further complicated by the ambiguous provisions of the NMC Act 2019 regarding the registration process.

- **Registration in multiple states** - The Regulations permit eligible persons to opt for more than one state when applying for registration. However, the registration number would contain a Unique Identification Number (“UIN”) that will have a state code suffixed to it.³¹ This would effectively result in one RMP being issued more than one UIN, and neither the NMC Act nor the Regulations clarify how this would be avoided.

³¹ Registration of Medical Practitioners and Licence to Practice Medicine Regulations 2023, reg 6(d).

- **Registration of additional qualifications** - A registered medical practitioner must apply directly to an SMC to register their additional medical qualifications instead of applying through the EMRB portal.³²

While the Regulations state that a licensed practitioner with registered additional qualifications may practise anywhere in the country, it is unclear whether a practitioner licensed in several states has to apply for registration of such additional qualifications in only one state.

- **Removal or restoration of registration** - When the name of a registered medical practitioner is removed from or restored in a State Register, it should be automatically reflected in the National Register. However, the Regulations do not clarify if the removal or restoration of the name of a registered medical practitioner in one State Register would be reflected in the Registers of other states where they are licensed to practise, especially when the practitioner would presumably have different UINs for practising in different states.

While the Regulations require doctors to choose the specific states where they wish to be registered to practise, they do not require SMCs to cross-reference their entries across State Registers. Consequently, it is likely that changes regarding a registered medical practitioner in one State Register would not be reflected in other State Registers. It is apprehended that the medical practitioners whose status of registration is temporarily or permanently cancelled in one state

can continue to practise unaffected in other states. It is unclear whether the National Register would be designed to resolve this issue of discrepancies in entries across state registers.

Key Takeaways

We observed significant differences in the numbers of registered medical practitioners recorded between the IMR and the RTI replies across several states such as Manipur, Nagaland and Telangana. It is unclear why the differences in the numbers are so stark for some states - the State Medical Councils may have seen an unprecedented rise in registrations, or the data is not updated in the IMR till 2021 as claimed, or the data from the SMCs may not have been properly forwarded to the IMR.

It is concerning that the process for setting up the National Register began four years after the enactment of the NMC Act 2019, and even then, the process continues to get delayed as the EMRB is yet to set up the web portal for practitioners to apply for registration.

³² Registration of Medical Practitioners and Licence to Practice Medicine Regulations 2023, reg 7(i).

³³ Registration of Medical Practitioners and Licence to Practice Medicine Regulations 2023, reg 10(iii).

³⁴ Rema Nagarajan, 'New Doctor Registration Rules Could Fix Some Old Issues but Raise New Ones' *The Times of India* (23 May 2023) <<https://timesofindia.indiatimes.com/india/new-doctor-registration-rules-could-fix-some-old-issues-but-raise-new-ones/articleshow/100432773.cms?from=mdr>> accessed 22 June 2023. This concern had arisen when the IMC Act 1956 was in force as well. See 'Multiple Registration of Doctors Makes Tracking Difficult' *The Times of India* (22 September 2018) <<https://timesofindia.indiatimes.com/india/multiple-registration-of-docs-makes-tracking-difficult/articleshow/65908864.cms>> accessed 22 June 2023.

How are complaints
addressed?







How are complaints addressed?

Presently, RMPs are governed by a dual legislative system - the NMC Act 2019 as well as the SMC Acts in the states/UTs that have enacted such laws. The Regulations framed under the NMC Act 2019 (and previously, the Regulations framed under the IMC Act) define professional misconduct, whereas the SMC Acts generally establish the mechanism for addressing complaints against RMPs for professional misconduct. Since the National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations 2023 (“NMC Professional

Conduct Regulations 2023”) have been held in abeyance,³⁵ the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 (“IMC Regulations 2002”) framed under the IMC Act 1956 by the MCI are currently applicable. However, in this Chapter, we focus on the NMC Professional Conduct Regulations (i.e., the version notified on 2 August 2023) as they would presumably be re-notified, although it is unclear what modifications would be made.

Forum of First Instance

Depending on whether a complaint against an RMP is filed by an aggrieved person or whether the complaint

is initiated suo moto, the forum that would hear the matter first would differ, as explained below.

Table 5.1: Where the complaint is first initiated

	If complaint filed (As per NMC Professional Conduct Regulations 2023)	If suo-moto action taken (As per NMC Professional Conduct Regulations 2023)	If complaint filed (As per IMC Regulations 2002)
Forum of first instance	<ol style="list-style-type: none"> SMC EMRB - wherever an SMC is yet to be established 	<ol style="list-style-type: none"> SMC EMRB NMC 	SMC

³⁵ The National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations 2023 had been notified, but they were put on hold by the National Medical Commission through the National Medical Commission Registered Medical Practitioners (Professional Conduct) (Amendment) Regulations 2023. As of drafting this report, these NMC Regulations have not come into effect.

As per the NMC Act 2019, SMCs that have the power to take disciplinary action against RMPs must function as per the regulations/guidelines framed by the NMC. The EMRB or the SMC can also take up *suo moto* cognizance by a simple majority.³⁶ The NMC Professional Conduct Regulations 2023 lay down a specific procedure for filing complaints unlike the IMC Regulations 2002, which only state that “any

complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action”³⁷. As per the NMC Regulations,³⁸ the aggrieved person can file a complaint before the SMC online or offline ordinarily within 2 years of the cause of action. The complaint would have to be filed in the SMC where the RMP is located at the time of cause of action.

‘Professional Misconduct’

The NMC Professional Conduct Regulations 2023 list the duties and responsibilities of RMPs that form the core of their professional conduct, and any violation of these regulations and other laws applicable to medical practitioners would constitute professional misconduct.³⁹ In addition, the EMRB, NMC, and the SMCs may deal with forms of professional misconduct by RMPs that do not fall under any of the categories mentioned in the regulations.

The state Acts empower SMCs to take action against RMPs for professional misconduct or ‘infamous conduct in any professional respect’⁴⁰. While these Acts recognise violations of any Code/Regulations framed under the IMC Act 1956 (and replaced by the NMC Act 2019), they also provide for certain additional forms of misconduct, such as criminal conviction for a cognizable offense involving moral turpitude, and conviction under the Army Act 1950 for a criminal cognizable offense.⁴¹

Complainants and Number of Complaints

A core responsibility of the SMCs is to adjudicate complaints of professional misconduct against RMPs, underscored by the fact that all thirty existing SMC Acts permit the removal of the RMP’s name from the register on account of professional misconduct or ‘infamous conduct in any professional respect’.

Who files complaints

In order to prioritise public accountability, the authors expected that the majority of the SMC Acts would allow complaints to be filed either by any aggrieved person or to be initiated *suo moto* by the SMC.

³⁶ National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations 2023 (NMC Professional Conduct Regulations 2023) reg 38.

³⁷ Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 (IMC Regulations 2002) reg 8.2.

³⁸ NMC Professional Conduct Regulations 2023, reg 38.

³⁹ NMC Professional Conduct Regulations 2023, reg 37.

⁴⁰ This phrase can be observed in some SMC Acts - see for e.g., Bihar and Orissa Medical Act 1916, proviso (b) to s 17; Madras Medical Registration Act 1914, second proviso to s 13; West Bengal Madras Medical Registration Act 1914, s 25.

⁴¹ See for instance, Maharashtra Medical Council Act 1965, s 22; Nagaland Medical Council Act 2014, s 22; Sikkim Medical Registration Act 2005, s 15.

We reviewed the Acts for thirty states/UTs to note whether they allow complaints to be filed by any aggrieved person and whether they empower the SMC to initiate suo moto action against an RMP. We observed that while all the Acts directly or indirectly permitted suo moto action by the SMC, the SMC Acts for only seven states/UTs permit any aggrieved person to file a complaint against an RMP for professional misconduct.⁴²

Numbers of complaints received by SMCs - A Snapshot

In our RTI applications to the thirty-one SMCs, we requested (1) the number of complaints the SMCs have received, as well as (2) the number of suo moto complaints they have initiated, from 2002 (when IMC

Regulations 2002 were passed) till the date of filing of the RTI applications (September 2022). Till December 2022, only ten SMCs provided us with the number of complaints received by them. Notably, three SMCs replied that they have either not maintained records of complaints received or not digitised them - Gujarat, Karnataka and Madhya Pradesh.

It is to be noted that not all responses correspond to the timeline we specified in the respective applications. For instance, Uttar Pradesh only provided information from 2007 onwards, that is, when its Ethics Committee was established. Keeping in mind that not all SMCs have been established and operational since 2002, the table below notes the total number of complaints received by the responding SMCs:

SMCs that Provided Substantive Replies	Total Number of Complaints Received as per RTI replies (from 2002 or when the SMC became operational, whichever is earlier)	Suo motu action/ cognizance taken by the Council as per RTI replies
Arunachal Pradesh	3	Nil
Goa	48	2
Himachal Pradesh	1	0
Jammu and Kashmir	22	10
Jharkhand	83	0
Manipur	Nil	Nil
Nagaland	1	0
Telangana	Unresponsive	6
Uttar Pradesh	1327	Nil (they noted that they do not initiate suo moto action at all)
Uttarakhand	224	44

⁴² Himachal Pradesh, Kerala, Mizoram, Uttarakhand, Delhi, Manipur, and Nagaland.

We observe from the table that despite having powers to enquire into the functioning of the RMPs, the SMCs of only four responding states/UTs have taken any suo moto cognizance, suggesting that SMCs are either reluctant or do not have the capacity to

play a more active regulatory role. Even for SMCs that have shared the numbers of complaints they have processed, the absolute numbers of complaints appear to be low for the duration they have been operational.

Elements of the Complaint Mechanism

As mentioned above, the NMC Act states that SMCs shall act in accordance with Regulations/ Guidelines framed under the NMC Act 2019 while taking any actions against professional misconduct. Even though the NMC Act was enacted in 2019, the IMC Regulations 2002 continued to be applicable as the Regulations for professional conduct had not been prescribed under the NMC Act 2019 until this year.⁴³

Judicial suggestions for complaint mechanism under the NMC Act

In 2021, in the case of *P. Basumani v The Tamilnadu Medical Council*,⁴⁴ the Madras High Court set aside the order of the Tamil Nadu SMC regarding the removal of the name of the petitioner doctor from the register for 6 months, and it also issued guidelines to be followed by the SMC while addressing complaints. The Court further recommended that these guidelines should be included in the new Regulations that are to be framed under the NMC Act 2019 and be made a Standard Operating Procedure for an effective complaint-handling mechanism. Some key recommendations of the Madras High Court appear to

have been incorporated, for example, the issuing of a show cause notice (Regulation 39, NMC Professional Conduct Regulations 2023), a reference to an expert enquiry committee (Regulation 39), observing the principles of natural justice Regulation 40), and setting a loose limitation period (Regulation 38(A)). Other recommendations of the Court, such as the process of finalising the enquiry committee report, making such report final and binding on the disciplinary board of the SMC/EMRB, and preserving medical documents and records for ten years, have not been incorporated.

Procedure for adjudicating cases against RMPs

Unlike the IMC Regulations 2002,⁴⁵ the NMC Professional Conduct Regulations establish a detailed process for dealing with complaints against medical practitioners. Since the NMC Act stipulates that the EMRB and the SMCs that are empowered to take disciplinary action against RMPs must act in accordance with the Regulations,⁴⁶ the following procedure would take precedence over the complaint mechanisms established in different SMC Acts⁴⁷:

⁴⁴ (2021) 8 MLJ 113.

⁴⁵ IMC Regulations 2002, reg 8.2. Regulation 8.2 states that "It is made clear that any complaint with regard to professional misconduct can be brought before the appropriate Medical Council for Disciplinary action. Upon receipt of any complaint of professional misconduct, the appropriate Medical Council would hold an enquiry and give opportunity to the registered medical practitioner to be heard in person or by pleader. If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner."

⁴⁶ NMC Act 2019, s 30(2).

⁴⁷ NMC Professional Conduct Regulations 2023, regs 39-40.

Figure 5.1: Process of dealing with a complaint by the SMC, EMRB, or the NMC as per the NMC Professional Conduct Regulations, 2023.



The case cannot be withdrawn once admitted by the forum, and the forum cannot review its own decision. In case the decision is not made within six months and the EMRB believes that there is no justified reason for the delay, then the EMRB can direct the SMC to hear the case on a day-to-day basis until the case is duly closed or may withdraw/transfer the complaint immediately.⁴⁸

Digital transparency about the filing procedure

Regulation 39(A) of the NMC Professional Conduct Regulations 2023 indicates that states are expected to eventually shift the process of filing complaints online. Consequently, the authors undertook to check how transparent the operational websites of the SMCs are when providing details about contacting them for grievance redressal. Specifically, we looked at the following aspects and observed accordingly:

- Whether the SMC has a website - Four SMCs have no operational websites - Assam, Bihar, Meghalaya and Mizoram.
- Whether the website has dedicated information for filing complaints - Seventeen SMC websites provide no information regarding complaint processes.⁴⁹ Five SMCs provide details about filing complaints offline.⁵⁰
- Whether complaints can be filed online on the website - Only four SMCs have an online portal for filing complaints.⁵¹

Interestingly, the website of the West Bengal SMC includes an online complaints portal exclusively for doctors to raise their grievance against the Council regarding registration, updating the state register and issuance of a no-objection certificate.⁵²

Legal assistance to parties during hearings

While several SMCs allow the complainant or the practitioner to be represented by legal counsel,⁵³ the NMC Professional Conduct Regulations 2023 take precedence, and they expressly prohibit both parties from being represented by a lawyer at any stage of the proceedings. The IMC Regulations 2002 only specified that during the inquiry into the complaint of professional misconduct, the practitioner can be heard by a pleader.⁵⁴

⁴⁸ NMC Professional Conduct Regulations 2023, reg 43.

⁴⁹ Andhra Pradesh, Arunachal Pradesh, Chhattisgarh, Goa, Himachal Pradesh, Jharkhand, Kerala, Manipur, Nagaland, Odisha, Sikkim, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh, and West Bengal.

⁵⁰ Delhi, Gujarat, Haryana, Karnataka, and Rajasthan.

⁵¹ Jammu and Kashmir, Madhya Pradesh, Maharashtra, and Punjab.

⁵² 'Complaint Box' (West Bengal Medical Council) <https://wbmc.wb.gov.in/index.php/doctors_corner/grievance> accessed 27 July 2023.

⁵³ Bihar and Orissa Medical Council Act 1916, s 17(b); Mizoram Medical Council Act 2010, s 18(2); United Provinces Medical Act 1917, s 26(1)(b); and Bengal Medical Act 1914, proviso (b) to s 17.

⁵⁴ IMC Regulations 2002, reg 8.2.

What actions are taken against RMPs for professional misconduct?

The IMC Regulations 2002 and the Medical Council of India Regulations 2000 did not have detailed guidance on the kinds of action that could be taken by SMCs in response to different instances of professional misconduct. This was noted by the Delhi High Court in *Ravi Rai v. Medical Council of India* (2018) as well:⁵⁵

“MCI must have a sentencing policy in place for the guidance of its Committees which are tasked with the job of returning recommendations both, on the guilt and punishment to be accorded to a delinquent doctor. The sentencing guidelines should take into account the aggravating and mitigating circumstances, including but not limited to whether or not the delinquent doctor is a first-time offender or a repeat offender.”

While the NMC Professional Conduct Regulations 2023 do include a list of several factors that may be considered when determining the responsibility of the medical practitioner,⁵⁶ they do not include commission of repeat wrongs as an aggravating factor.

Moreover, most SMCs do not publish updated records of the disciplinary action they take against medical practitioners - the authors found such records only for the Delhi Medical Council and the Karnataka Medical Council. Even on a central level, the Union Ministry of Health and Family Welfare has confirmed that the details of punishment awarded by the SMCs are not maintained centrally.⁵⁷ The website of the NMC provides a list of 68 doctors who are currently suspended - they were blacklisted from the IMR between February 2016 and January 2019.⁵⁸ However, the list provides no details about the misconduct the doctors have been suspended for, and sixty of these cases are listed as “not disposed off”. In the absence of any reliable records maintained by the Councils, the public must rely on information received from RTI applications, which is sketchy at best.

Levels of Disciplinary Action as per NMC Regulations

The NMC Professional Conduct Regulations 2023 prescribe guidelines that list five levels of disciplinary action that the NMC, EMRB, or the SMC may recommend after assessing the attributability and severity of the situation and the harm caused by the practitioner.

⁵⁵ 2018 SCC OnLine Del 10696.

⁵⁶ NMC Professional Conduct Regulations 2023, guideline 4.

⁵⁷ 'Medical Negligence and Professional Misconduct by Doctors', Lok Sabha Unstarred Question No. 4558 (19 July 2019) <<https://drive.google.com/file/d/128bGzYQxyv4crTnRWFb73p6IBLMMVDpX/view?usp=sharing>> accessed 28 October 2023.

⁵⁸ 'Black List Doctors' (National Medical Commission) <<https://www.nmc.org.in/information-desk/indian-medical-register/black-list-doctors/>> accessed 20 August 2023.

Table 5.3: Five levels of disciplinary actions that the NMC, EMRB, or an SMC may recommend under the NMC Professional Conduct Regulations 2023

Level	Action	When the Action is Warranted
1	Advisory, Instruction, Warning	Reformation-oriented measures are suitable, and may be awarded by themselves or in addition with other levels of action. Being penalised with this level of action would not bar the practitioner from receiving a 'good standing' certificate in the future.
2	Up to suspension of license to practise for a maximum of one month	When the doctor has breached the NMC Regulations or Guidelines, but the doctor was not conclusively proven to have caused direct harm.
3	Up to suspension of license to practise for a maximum of three months	When the doctor has breached the NMC Regulations or Guidelines, and it is conclusively proven that the doctor caused direct harm.
4	Up to suspension of license to practise for a period of three months to three years	Same as Level 3 - When the doctor has breached the NMC Regulations or Guidelines, and it is conclusively proven that the doctor caused direct harm. The difference between levels 3 and 4 is essentially the degree of responsibility of the RMP for the harm or injury caused.
5	Permanently debar the practitioner from practise	When the doctor has committed a willful or intentionally harmful/unlawful, prohibited action. This is undertaken only after a detailed inquiry by an Expert Group.

Corrective and Disciplinary Measures taken by SMCs

All SMC Acts confer wide powers upon the Council to take disciplinary action. While all thirty SMC Acts empower the SMC to temporarily or permanently remove an RMP from the register and impose fines, some permit the SMC to award imprisonment as

well⁵⁹. Additionally, state Acts like those of Delhi,⁶⁰ Himachal Pradesh,⁶¹ Madhya Pradesh, Manipur,⁶² Mizoram,⁶³ Nagaland,⁶⁴ and Uttarakhand⁶⁵ empower the SMC to award compensation to those aggrieved. However, state Acts that allow grant of compensation provide no clarity regarding the factors that must be considered when determining the sum of compensation.

⁵⁹ See for e.g. Uttarakhand Medical Council Act, 2002, s 27 (rigorous imprisonment up to three years) and Nagaland Medical Council Act, 2014, s 28 (rigorous imprisonment up to three years).

⁶⁰ Delhi Medical Council Act 1997, s 10(f).

⁶¹ Himachal Pradesh Medical Council Act 2003, s 10(e).

⁶² Manipur Medical Council Act 2009, s 13(f).

⁶³ Mizoram Medical Council Act 2010, s 8(e).

⁶⁴ Nagaland Medical Council Act 2014, s 10(8).

⁶⁵ Uttarakhand Medical Council Act 2002, s 10(f).

In our RTI application, we asked thirty-one SMCs for details with respect to the actions they have taken against RMPs for professional misconduct from

2002 (or whenever the SMC became operational) till September 2022. Their responses are tabled below:

Table 5.4: Details of action taken by SMCs against RMPs for professional misconduct from 2002 to 2022 (or whenever the Council became operational, whichever is later)

SMC	Inquiry Conducted	Reprimand/ Warning Issued	Penalty imposed	Temporary removal of name from the register	Permanent removal of name from the register
Telangana ⁶⁶	157	14	Nil	8	7
Nagaland ⁶⁷	Nil	1	Nil	Nil	Nil
Manipur ⁶⁸	Nil	Nil	Not available	Not available	Not available
Madhya Pradesh ⁶⁹	Nil	Nil	Nil	Nil	Nil
Jharkhand ⁷⁰	2	Nil	Nil	Nil	Nil
Jammu and Kashmir ⁷¹	5	5	3	Nil	3
Himachal Pradesh ⁷²	Nil	Nil	Nil	Nil	Nil
Goa ⁷³	21	Not provided	Not provided	2	Nil
Delhi ⁷⁴	3836	160	Nil	160 (not specified whether temporarily or permanently)	
Arunachal Pradesh ⁷⁵	3	2	Nil	Nil	Nil
Uttarakhand ⁷⁶	Not provided	66	Nil	7	1
Karnataka ⁷⁷	Not provided	47	Nil	30	Nil

⁶⁶ The information provided is 2016 onwards, after the bifurcation of the state of Telangana from Andhra Pradesh.

⁶⁷ Nagaland Medical Council was first constituted in 2014.

⁶⁸ Manipur Medical Council was first constituted in 2012.

⁶⁹ Madhya Pradesh Medical Council was first constituted in 1998.

⁷⁰ Jharkhand Medical Council was first constituted in 2002.

⁷¹ Jammu and Kashmir Medical Council was first constituted in 1987.

⁷² Unclear when Himachal Pradesh Medical Council was first constituted, but the rules under the HPMC Act were notified in 2011.

⁷³ Goa Medical Council was first constituted in 1993.

⁷⁴ Delhi Medical Council was first constituted in 1998.

⁷⁵ Arunachal Pradesh Medical Council was first constituted in 2004-2005.

⁷⁶ Uttarakhand Medical Council was first constituted in 2003.

⁷⁷ Telangana Medical Practitioners Registration Act 1968, s 22; Nagaland Medical Council Act 2014, s 28; Manipur Medical Council Act 2009, s 28; Madhya Pradesh Ayurvedigyan Parishad Adhinyam 1987, s 24; Bihar and Orissa Medical Act 1916, s 29; Jammu and Kashmir Medical Registration Act 1998, s 24; Himachal Pradesh Medical Council Act 2003, s 28; Goa Medical Council Act 1991, s 27; Delhi Medical Council Act 1997, s 27; Uttarakhand Medical Council Act 2002, s 27.

The above table highlights the following points:

- Even after taking into account the variety in the number of practitioners in each state/UT and the delays in maintaining records, the absolute number of instances where the SMCs have taken disciplinary actions against medical practitioners appears to be low.
- Generally, the SMC issues a warning to the practitioner. We were unable to find any records available online that confirmed if the SMCs followed-up on the RMPs who were given a warning.
- There are very few instances of an RMP being removed from a register either temporarily or permanently. While the details of these cases were not provided, these still indicate that compared to issuance of warnings, the suspension of registration has not been the preferred disciplinary action.
- Given that even suspension of registration is not ordered often, it is not surprising that the Acts of ten responding states permit the SMCs to award imprisonment,⁷⁷ but no such instances have been reported.

Media reports confirm the inconsistencies in the level of disciplinary action imposed on medical professionals who have been found liable for professional misconduct. For instance, the Telangana Medical Council ordered the suspension

of registration of two doctors for three and six months respectively because in one case, the doctor operated on the wrong leg, and in another case, the doctor delayed referring the patient to another hospital and the delay led to the patient's death.⁷⁸ On the other hand, the Delhi Medical Council had suspended a government doctor's registration for one month because she provided the fertilised eggs of one IVF patient to two other patients without the consent of any of the patients. However, the NMC set aside the order of suspension and let off the practitioner with only a warning, noting that the doctor has "contributed immensely to the field of reproductive medicine".⁷⁹

Case studies - Karnataka and Uttarakhand Medical Councils

As we noted above, the number of times a disciplinary action was imposed is insufficient by itself to understand how SMCs adjudicate complaints against RMPs. The media coverage about the disciplinary action that SMCs have taken against medical practitioners is sporadic as well.⁸⁰ However, in order to paint a more well-rounded picture about the functioning of SMCs as a regulator, the authors proffer case studies of specific SMCs where a significant number of cases adjudicated by the SMC are analysed in terms of the grounds of complaints against RMPs and the disciplinary action ordered.

⁷⁸ 'Telangana State Medical Council suspends licences of two doctors over misconduct' *The New Indian Express* (Hyderabad, 15 April 2023) <<https://www.newindianexpress.com/states/telangana/2023/apr/15/telangana-state-medical-council-suspendslicences-of-two-doctors-over-misconduct-2566079.html>> accessed 18 August 2023.

⁷⁹ 'AIIMS doctor provides IVF patient's eggs to two women without consent; NMC lets her off with warning' *ET Healthworld* (New Delhi, 14 August 2023) <<https://health.economictimes.indiatimes.com/news/hospitals/aiims-doctor-provides-ivf-patients-eggs-to-two-women-without-consent-nmc-lets-her-off-with-warning/102705422>> accessed 15 September 2023.

⁸⁰ See for instance, 'Telangana State Medical Council suspends licences of two doctors over misconduct' *The New Indian Express* (Hyderabad, 15 April 2023) <<https://www.newindianexpress.com/states/telangana/2023/apr/15/telangana-state-medical-council-suspendslicences-of-two-doctors-over-misconduct-2566079.html>> accessed 18 August 2023; 'Delhi Medical Council suspends doctor for issuing fake medical certificates' *The Times of India* (New Delhi, 28 February 2023) <<https://timesofindia.indiatimes.com/city/delhi/delhi-medical-council-suspends-doctor-for-issuing-fake-medical-certificates/articleshow/98288625.cms?from=mdr>> accessed 18 August 2023; 'Action against Kerala doctor for quackery' *The Hindu* (Thiruvananthapuram, 29 May 2021) <<https://www.thehindu.com/news/national/kerala/action-against-kerala-doctor-for-quackery/article34676310.ece>> accessed 10 August 2023; 'Medical Council to de-register doctor' *The Hindu* (Chennai, 21 January 2022) <<https://www.thehindu.com/news/national/tamil-nadu/medical-council-to-de-register-doctor-for-illegal-issue-of-certificate/article38305259.ece>> accessed 10 August 2023.

We observed that the Karnataka Medical Council (“KMC”) provides a list online of the cases where medical practitioners were held responsible for professional misconduct, including details about the action taken against such practitioners. We also received as an RTI reply a list of 224 cases from the Uttarakhand Medical Council (“UKMC”) detailing the grounds of complaints as well as the action taken against the medical practitioners found liable. Due to the availability of information from these two Medical Councils, we undertook case studies of the KMC and the UKMC.

A. Karnataka Medical Council (KMC)

The Karnataka Medical Registration Act, 1961 governs the regulation of medical practitioners in the State through the Karnataka Medical Council (“KMC”). It states that after due inquiry, if a medical practitioner is found guilty of any misconduct, negligence, incompetence or violation of Code of Medical Ethics, the Council may either issue a letter of warning or direct the removal of the name of the medical practitioner from the register for a specified or indefinite period.⁸¹ For this purpose, the Act defines ‘misconduct’ as the conviction for a criminal cognizable offence involving moral turpitude or any conduct which is infamous relating to the medical profession.⁸²

We noted that while the KMC does not provide the number of complaints it has received on its website,⁸³ it does provide a list of the RMPs who were found guilty of professional misconduct or medical negligence.⁸⁴ The most recent list details the action taken against such RMPs in each of the 82 listed cases,⁸⁵ and it details the basis of such action in 59 cases.

Grounds for complaint

The KMC Act empowers the Council to take up complaints relating to any misconduct, negligence, incompetence or violation of IMC Regulations on the part of a medical practitioner.⁸⁶ Such grounds include medical negligence,⁸⁷ conviction for a cognisable criminal offence involving moral turpitude as well as any conduct which is considered to be “infamous in relation to the medical profession” by the KMC.⁸⁸

We reviewed the above mentioned 59 cases and grouped them on the basis of the grounds of complaint. For clarity, it should be noted that

- Most cases involve more than one ground of complaint. Therefore, the sum of the complaints within the following categories exceeds the total number of cases we have examined.
- This list does not provide any details about the complainants, or whether the medical professionals practised in the public or private sector, or whether any of these 82 cases were taken up suo moto by the KMC.

⁸¹ Karnataka Medical Registration Act 1961, s 15.

⁸² *ibid.*

⁸³ The only information in this regard can be sourced from media coverage noting that between 2012 and 2017, the KMC received 329 complaints against doctors. See Sunitha Rao R, ‘Medical negligence: Only 33 doctors proven guilty in Karnataka since 2012’ *The Times of India* (Bengaluru, 6 July 2017) <<https://timesofindia.indiatimes.com/city/bengaluru/medical-negligence-only-33-doctors-proven-guilty-in-karnataka-since-2012/articleshow/59467958.cms>> accessed 20 August 2023.

⁸⁴ ‘List of Doctors found guilty of Medical Negligence / Misconduct and Punished by K.M.C. w.e.f. year 2015’ (Karnataka Medical Council, 18 August 2023) <<http://karnatakamedicalcouncil.com/userfiles/file/Disciplinary%20Action%20Against%20Doctor%2016-08-2023.pdf>> accessed 20 August 2023.

⁸⁵ A comparison with the previously published lists shows that in the most recent list, the Council has omitted one case from the list - it appears that this is an inadvertent error. Accordingly, we have considered the total number of cases as 82. The omitted entry is entry no. 76 with enquiry no. KMC/62Exp/Doct/2021 in this list published in February 2023 - ‘List of Doctors found guilty of Medical Negligence / Misconduct and Punished by K.M.C. w.e.f. year 2015’ (Karnataka Medical Council, 3 February 2023) <<http://www.karnatakamedicalcouncil.com/userfiles/file/Disciplinary%20Action%20Against%20Doctor%2003-02-2023.pdf>> accessed 20 May 2023.

⁸⁶ Karnataka Medical Registration Act 1961, s 15.

⁸⁷ ‘Standard Operating Guidelines’ (Karnataka Medical Council, 11 March 2023) <<http://karnatakamedicalcouncil.com/Upload/SOP.pdf>> (11 March 2023).

⁸⁸ Karnataka Medical Registration Act 1961, explanation to s 15(1).

- Even when the list provides the rationale for finding liability, the details are extremely limited. For instance, several matters simply list ‘medical negligence’ as the reason for taking action.

1. Non-registration / non-renewal of registration

In 11 cases, the issue included non-registration of medical professionals or their renewal of registration, and in one case, multiple medical professionals had been sanctioned differently. In four cases, the doctor was issued a warning and in one, the hospital was warned. In the other eight cases, the KMC ordered the removal of the names of the medical professionals from the register until they renewed their registration and submitted evidence of having attended accredited Continuing Medical Evaluation (“CME”). In one case, the medical professional registered himself with the KMC after the complaint was filed, and the Council warned the concerned hospital for having appointed an unregistered medical professional.

2. Practising without qualifications or outside the area of competence

In 13 cases, the doctor was held liable for either misrepresenting their employment status or lacking the requisite qualifications. In 10 cases, the doctors were issued warnings only, and in 2 cases, the doctor was removed from the state register for three months and one year respectively. In another case, the doctor had suffixed an unrecognised qualification to her name, and the KMC not only directed her to remove that qualification, but it also directed the concerned hospital to ensure that the qualification was removed and inform both the KMC as well as the authorities under the Karnataka Private Medical Establishment Act (“KPMEA”). In one case where the doctor was issued a warning, the MCI had notified KMC about him misrepresenting his employment status - even

though he was working at one hospital, he appeared in another hospital for MCI inspection. However, his name was reinstated after an interim order of the Kerala High Court.⁸⁹

3. Misconduct during treatment

The doctor was found liable for misconduct or medical negligence in sixteen cases, and in one case, multiple medical professionals had been sanctioned differently. In eleven cases, the doctors were issued warnings only, and in only six cases were the names of the doctors removed from the state register. Amongst the latter six cases, the names of doctors were restored in the register in one case upon order of the Karnataka High Court.

- Amongst the cases where the KMC issued only a **warning**, the doctors were found liable for improper monitoring and evaluations, improper follow-up with patient, excessive hysterectomies, providing medication without confirming diagnosis, and issuance of medical certificates without examining patients.
- Amongst the cases where the KMC ordered the **removal** of the name of the doctor from the state register, the issues included certifying the wrong cause of death, providing treatment whose legal validity was unproven, improper preoperative and follow-up evaluations, and ‘medical negligence’ in general.

4. Misconduct beyond treatment

Physicians have been held liable for misconduct beyond the direct provision of treatment. Amongst nine such cases, the issues were centred around issuance of improper medical certificates and poor maintenance of records. In five cases, the doctors were sanctioned for issuing improper medical certificates. The misconduct ranged from using words

⁸⁹ Dr KV Shivashankar v Medical Council of India WP No. 20452/2018 (Kerala High Court, 21 June 2018).

such as “spiritually”, recommending long rest periods without authorization to issuing wound certificates when they were presumably unwarranted. Doctors were issued a warning in four cases, and only in one case was the doctor’s license suspended for five years.

In the other four cases, the doctors (and interestingly, a hospital as well) were sanctioned for not maintaining medical records as required. In one case, the hospital was found liable by KMC for failing to maintain the requisite medico-legal register. In all four cases, the KMC issued a warning only.

5. Disobeying notices of the Council

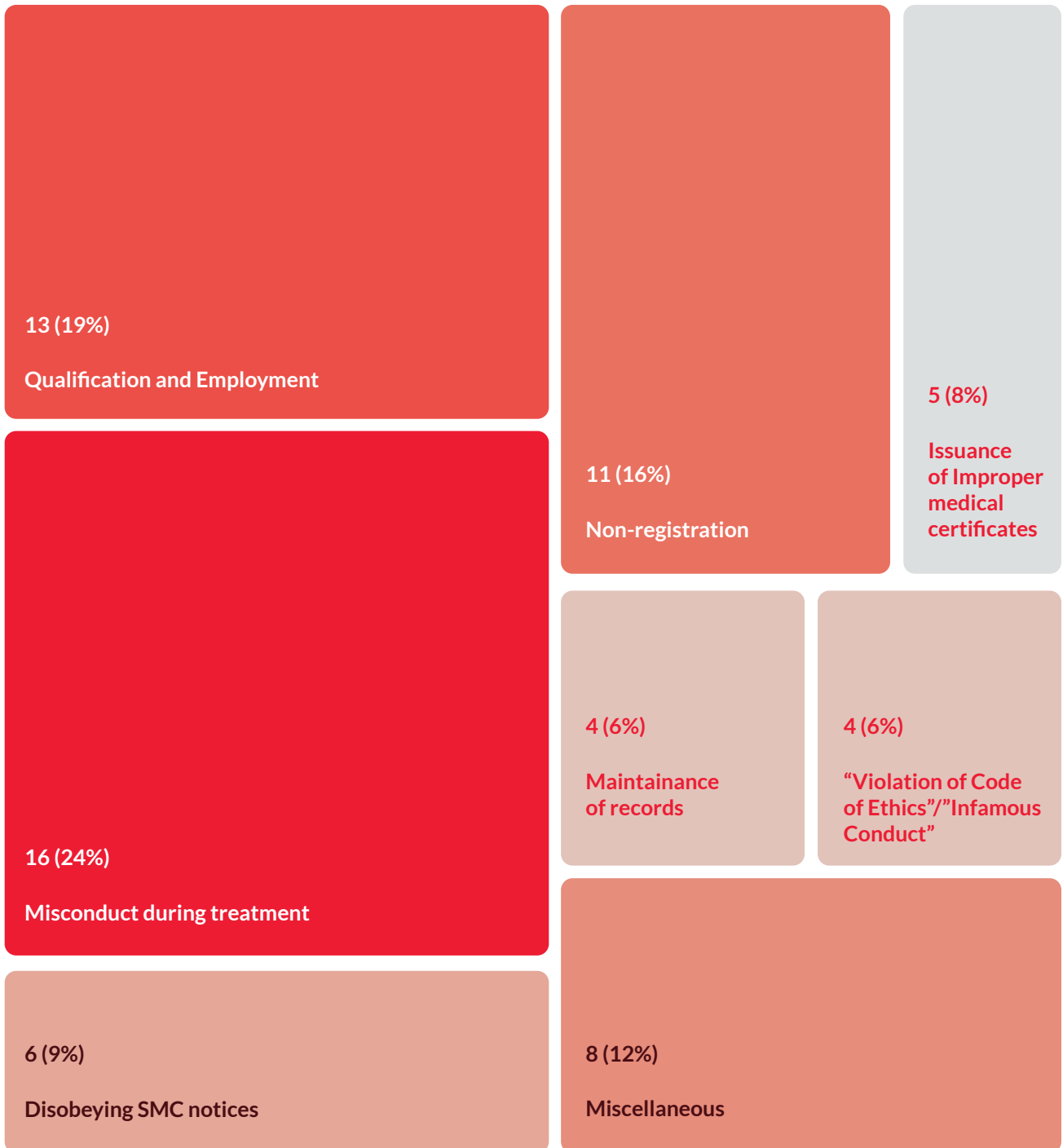
Under the KMC Act, any person aggrieved by the decision to grant registration to a doctor may file an appeal to the KMC. After conducting an enquiry, the KMC must issue notice to the complainant for presenting their case. Amongst these 59 cases, we found six cases regarding physicians repeatedly disobeying notices from the KMC. In three cases, the KMC issued warnings, and in the other three cases, the KMC removed the doctor’s name from the state register for a period of three months, six months and one year respectively. In one case, the doctor had not only failed to appear before the Council after being sent four notices, he also produced an improper medical certificate claiming ill health. The Council ordered the removal of his name from the state register for one year.

6. “Violation of Code of Ethics” or “Infamous Conduct”

For four cases, the basis for liability was broadly phrased, such as ‘violation of Code of Ethics’ or ‘infamous conduct’. The disciplinary action in these cases varied - the KMC issued warnings in two cases, removed the name of the doctor from the state register in one case, and debarred the doctor from teaching in any medical institute in another case.

⁹⁰ Karnataka Medical Registration Act 1961, s 46(2).

Figure 5.2: Bases for ordering disciplinary actions against doctors by the KMC between 2015-2023



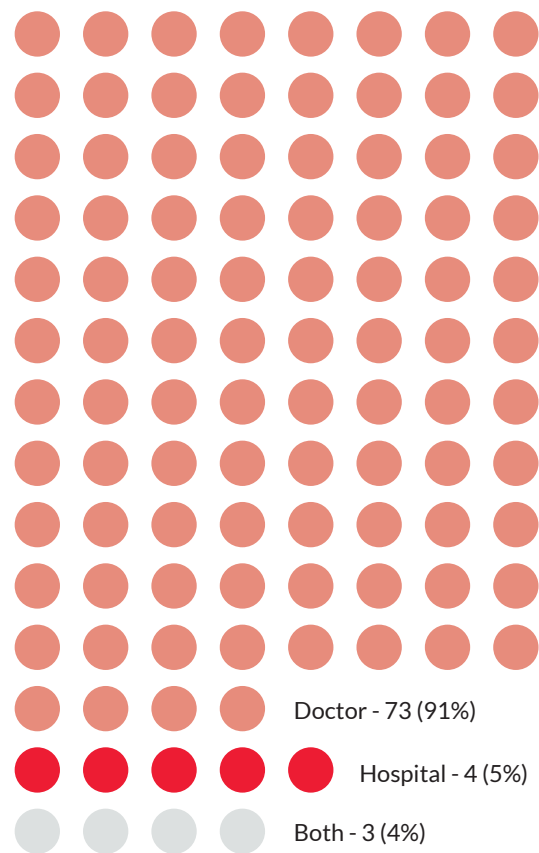
Who was held liable for cases of misconduct

While in the majority of cases, it was the practitioner who was liable, as is to be expected from a body like the SMC, we observed that in seven instances, the KMC either found the *hospital* liable for unethical activities or directed it to follow-up with the Council about complying with its order. In three cases, the KMC issued directions or warnings to both the doctor as well as the hospital, and in four instances, the KMC held only the hospital liable. We categorised these cases separately to observe how the KMC exercised its jurisdiction over hospitals, since the KMC Act empowers the Council to take action against only doctors and *not* against medical establishments. The KPME Act, which governs medical establishments in the state, does not refer to the powers of the KMC Council either.

- In the three cases where both doctors and hospitals were held liable, the KMC issued different sanctions on the hospitals in each case. In one matter, the hospital was warned for appointing a doctor who lacked the necessary qualifications, and in another case, the KMC informed the KPMEA as well as the District Health Officer to take action against the defendant clinic for quackery. In the third case, the hospital was directed to ensure that the defendant doctor removed an unrecognised suffix to his name and to inform the KMC as well as the KPMEA.
- In the four cases where the KMC held only the hospital liable for unethical activities, the Council issued warnings and issued additional directions in two cases. In one case that involved the issue of overcharging, the hospital was directed to return

the excess amount charged as well as write a letter to the KPMEA “for taking action as per their Act” (presumably the Karnataka Private Medical Establishments Act, 2007). In another case, the hospital was found liable for failing to maintain a medico-legal register,⁹¹ and the KMC warned that in case the hospital fails to comply in the future, the Council would intimate the KPMEA to cancel the hospital’s registration.

Figure 5.3: Proportion of practitioners and hospitals held liable by the KMC between 2015-2023



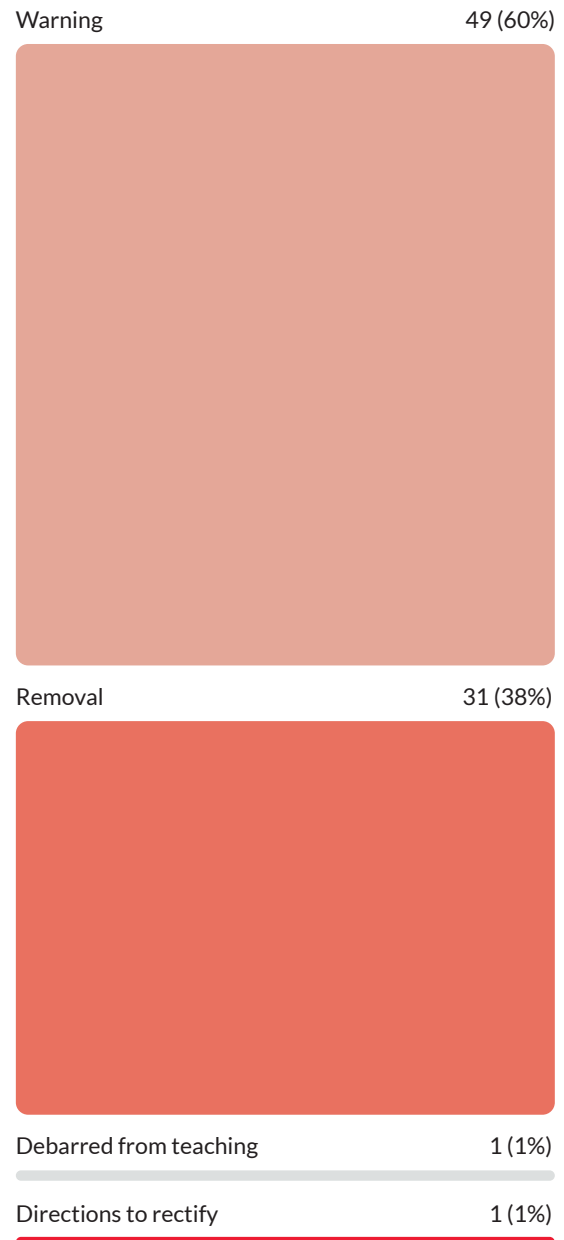
⁹¹ The relevant entry in the list mentions that the hospital authorities were directed to maintain a medico-legal register for intimating such cases to the police as per IMC Regulations 2002, s 1.3. However, the Regulations apply to individual physicians only, and section 1.3 talks about maintenance of medical records but not any medico-legal register.

Actions taken

If a medical practitioner is found liable for misconduct, the KMC may either issue a letter of warning to the practitioner or direct the removal of their name from the register for a definite or indefinite period.⁹² Amongst the 82 cases where a professional or institution was found liable for misconduct/unethical activities, the KMC issues simple warnings in the majority of cases, i.e., in 48 cases. In 32 cases, the KMC ordered that the name of the doctor be removed from the state register until renewal or until they complete the prescribed hours of CME. Amongst these 32 cases of removal, the names were noted to have been removed from the IMR as well in 7 cases - these orders were issued in 2016 and appear to have originated from the MCI itself. Notably, the IMC Act (and now, the NMC Act 2019) mandate that any name removed from the state register would also be removed from the IMR, and vice versa.⁹³

While the KMC regularly updates its independently maintained list of doctors found liable and the action taken against them, we did not have access to the state register and could not confirm if these disciplinary measures have also been reflected in it. Neither could we find any public records listing the doctors whose names have been restored in the state register after they renewed their registration or completed the directed hours of CME.

Figure 5.4: Area map showing the proportion of different disciplinary measures ordered by the KMC between 2015-2023



⁹² Karnataka Medical Registration Act 1961, s 15(1).

⁹³ IMC Act 1956, s 24; NMC Act 2019, s 31(7). The NMC Act 2019 mandates that the National Register would be electronically synchronised with the state registers, so that any change in one will automatically reflect in the other.

B. Uttarakhand Medical Council (UKMC)

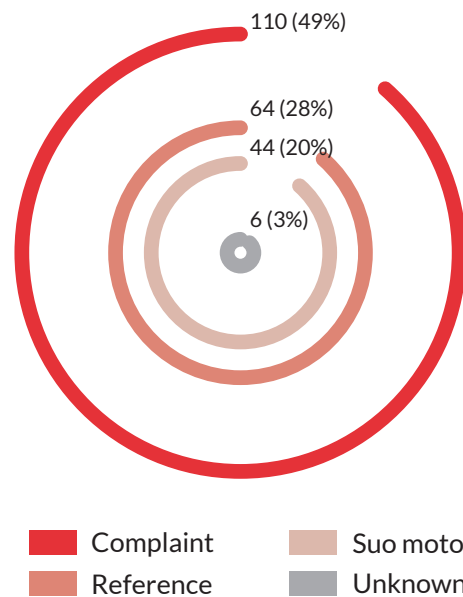
The UKMC may receive complaints from the public (including patients and their relatives) against misconduct or negligence by a medical practitioner and it is empowered to conduct inquests, take a decision on the merits of the case and initiate disciplinary action accordingly.⁹⁴ The UKMC Act also confers power on the Council to award compensation and to take action against frivolous complaints.⁹⁵ If an RMP is found guilty of any misconduct by the Council or the executive committee, the Council may choose to issue a warning, or direct the name of the RMP to be removed from the register for either specific periods or permanently.

In response to our RTI application, the Uttarakhand Medical Council provided a dataset of 224 complaints it has received between 2002-2022. We examined these cases in the contexts of source of complaints, the disposal timelines, grounds for complaints as well as the actions taken by the Council if the practitioner was found liable for misconduct.

Source of complaints

Out of the 224 cases adjudicated by the UKMC between 2002-2022, 110 cases were filed by an individual, and the complaint was referred to the UKMC by another authority in 64 cases. These authorities include the Directorate General of Medical Services, District Magistrate, Chief Medical Officer as well as the MCI/NMC. In 44 cases, the Council took *suo moto* cognizance against RMPs. 15 complaints in total were filed by doctors themselves against other doctors for alleged medical negligence, general misconduct as well as administrative issues, or misbehaviour of the respondent. Six cases were listed with no details about the complainant.

Figure 5.5: Proportion of sources of complaints received by the UKMC between 2002-2022



Grounds for complaints

A registered practitioner may be found guilty of any misconduct, which includes conviction for a cognisable criminal offense involving moral turpitude as well as any conduct which is considered to be “infamous in relation to the medical profession particularly under any Code of ethics prescribed by the [UKMC] or by the MCI”.⁹⁶

We analysed in detail the reason for complaints provided by the UKMC and grouped them under fifteen broad categories for the purpose of our analysis. As can be seen from the following figure, the highest number of cases i.e. 131 were filed against an RMP for alleged medical negligence. Further, there were twenty-one cases of inadequate qualification that centred around lack of medical qualifications or misrepresentation of qualifications by professionals.

⁹⁴ Uttarakhand Medical Council Act 2002, s 10.

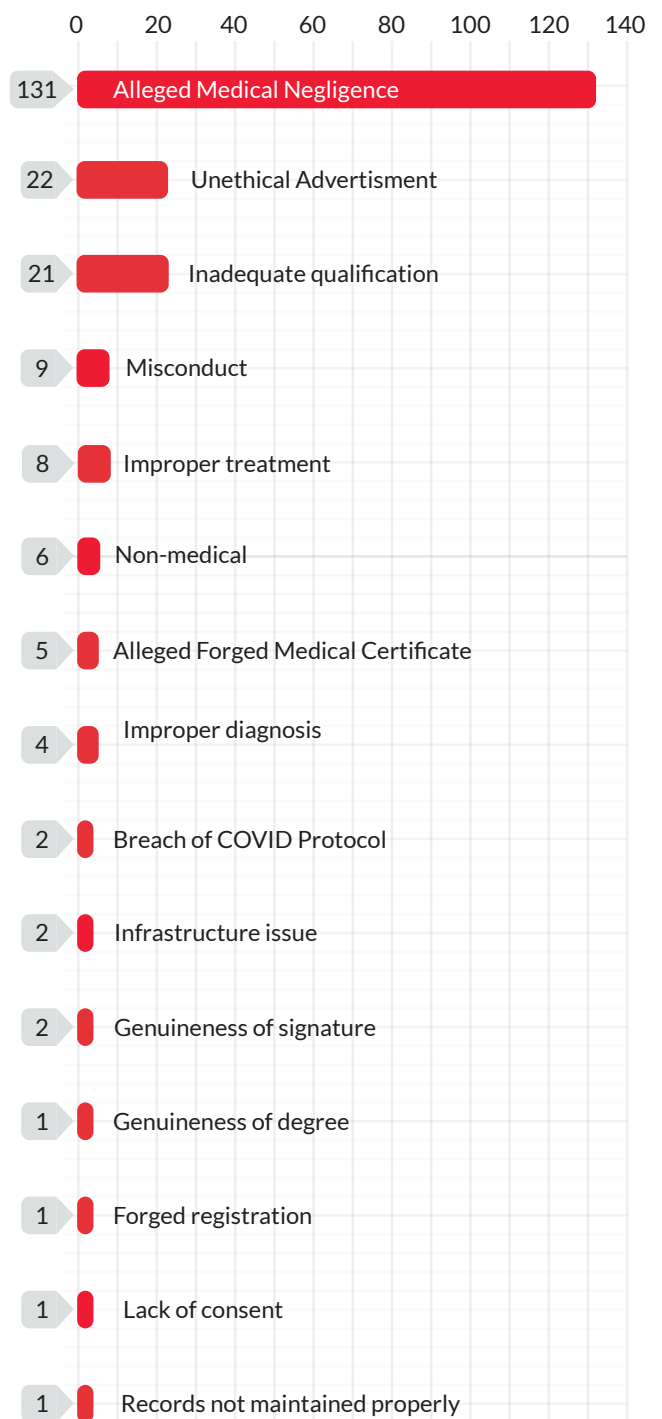
⁹⁵ Uttarakhand Medical Council Act 2002, s 10(f).

⁹⁶ Uttarakhand Medical Council Act 2002, s 21(2).

Unethical advertisements by RMPs in newspapers comprised twenty-two of the cases against RMPs that were taken up by the UKMC. Eight cases of improper treatment included individual instances of unsatisfactory or faulty treatments like an improper hair transplant.

Additionally, the UKMC proceeded against RMPs in seven instances for reportedly issuing forged medical certificates or signing prescriptions improperly. Two cases centred around breaches of COVID-19 protocol - these had been filed against the proprietors of two hospitals, who were medical practitioners as well. The dataset also includes individual cases of forged registration and medical degree, not obtaining patient consent, and improper maintenance of medical records. Interestingly, the dataset included six cases of non-medical/administrative issues like hospital rent dispute and non-payment of salary by the hospital to the doctor as well and for all such cases, the UKMC has either dismissed them or is yet to dispose of them. An overview of the grounds of complaints is illustrated below.

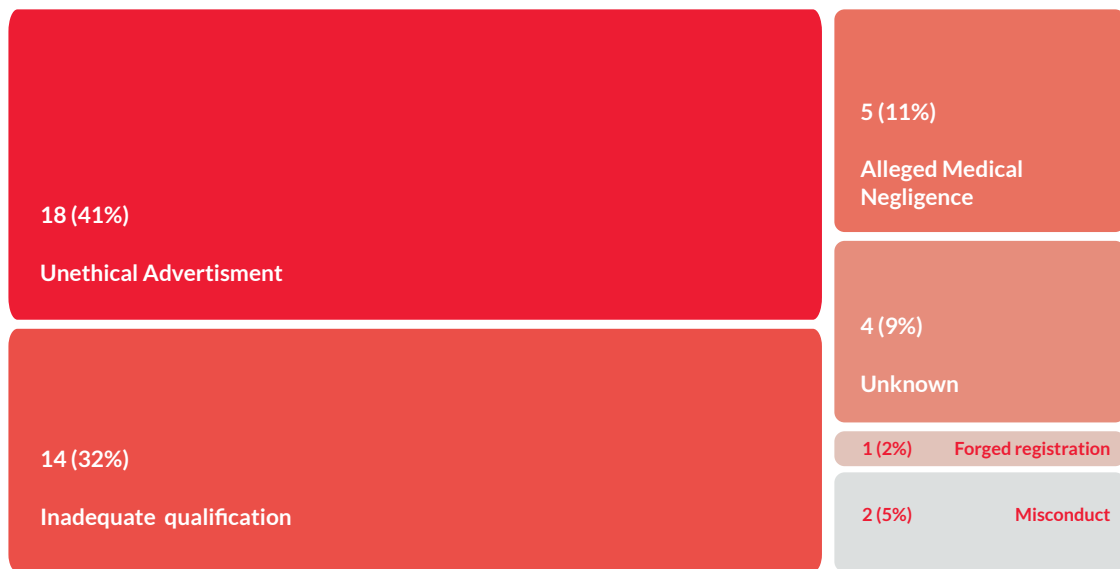
Figure 5.6: Grounds of complaints received by the UKMC between 2002-2022



As illustrated in Figure 5.7, the highest number of *suo moto* actions i.e. 18 out of 44, were taken up by the Council against unethical advertisements published by RMPs in newspapers. The UKMC further took cognizance in 14 instances of RMPs practising without

qualifications or competence in their field and 7 instances of medical negligence and misconduct. One of these cases involved the defendant pathologists representing more than two labs for conducting tests.

Figure 5.7: Grounds of cases taken up *suo moto* by the UKMC between 2002-2022



Actions taken

The UKMC can sanction a practitioner with a variety of disciplinary actions, including warning, temporary or permanent removal of name from the register, suspension, reprimand and other disciplinary action that the Council may find ‘necessary or expedient’.⁹⁷ Interestingly, while the Act prescribes that the Council may grant compensation,⁹⁸ this is not acknowledged in the specific provision that deals with imposing disciplinary action for misconduct. Compared to the prescribed powers of the KMC, the UKMC appears to have - and has indeed exercised - much wider discretion while imposing disciplinary action on medical professionals.

Overview of outcomes

In terms of outcomes of the listed cases, the medical professional was found liable for misconduct in a hundred cases. In 39 cases, the UKMC issued only a warning to the medical professional. The registration of the RMP was suspended only in seven cases for periods ranging from three months to three years, and in only one instance was the name of the RMP removed from the register for an unspecified period. There were also two cases where the UKMC directed that First Information Reports be filed against the practitioner.

In 57 cases, the medical professional was determined to be not liable for the misconduct alleged. Nineteen

⁹⁷ Uttarakhand Medical Council Act 2002, ss 10(d) and 21(2); ‘Powers and Duties’ (Uttarakhand Medical Council) <<https://ukmedicalcouncil.org/>> accessed 28 September 2023.

⁹⁸ Uttarakhand Medical Council Act 2002, s 10(f).

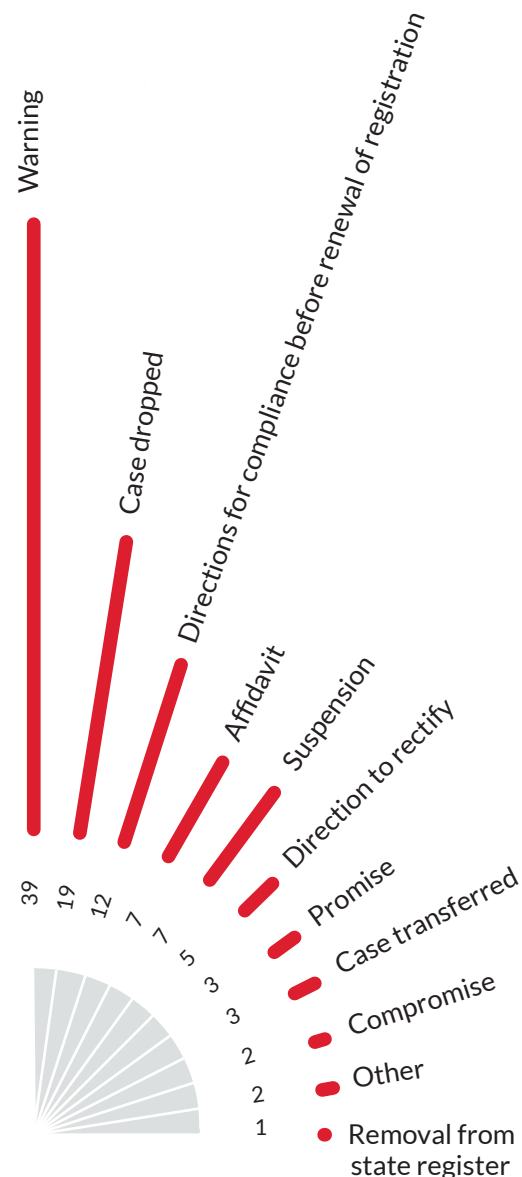
cases were dropped due to the non-participation/ non-appearance of either party, non-cooperation by parties or the lack of jurisdiction. In four instances, the complainant withdrew their complaint. Worryingly, one case was noted to be withdrawn by the complainant because the decision was not issued within the prescribed six months.

Apart from warnings, suspension and removal from the register, the UKMC has imposed a variety of measures when it has found the practitioners liable for misconduct.

- In twelve instances of medical negligence or unethical advertisements by medical practitioners, the UKMC directed the practitioners to undergo CME for certain hours before the renewal of their registration. It also directed the Council registrar not to issue a no-objection-certificate to such professionals for the renewal of their registration until they completed their CME.
- In seven cases, the Council directed RMPs to submit an affidavit undertaking not to repeat the erroneous act.
- In three cases, the Council simply directed the practitioners to either submit an apology letter or promise to not repeat the act.
- The UKMC issued specific directions to rectify in five cases which included directions to ensure that the hospital was in accordance with the ‘town planning norms’,⁹⁹ withdraw from the franchise of the defendant laboratory, and that the signboard and prescription pad of the doctor reflected accurate details.
- In two cases, the Council permitted the complaint to be dropped after the parties submitted a compromise agreement.

Notably, even though the UKMC Act empowers the Council to grant compensation to the victims, it has not awarded compensation in any of these cases.

Figure 5.8: Different types of measures taken by the UKMC against practitioners between 2002-2022



⁹⁹ This is peculiar, because the two instances where the UKMC issued such a direction were cases of medical negligence. The UKMC Act does not expressly empower the Council to either issue such instructions or issue directions to healthcare facilities overall.

Action taken in cases of alleged medical negligence

While the details of what constitutes medical negligence in these cases have not always been mentioned, it appears that the UKMC has listed this term to broadly include various acts, including wrong treatment, failure to follow medical protocol and even structural deficiencies in the establishments run by RMPs. Since cases of medical negligence were recorded to be the most frequent ground for complaints, we noted the variety of outcomes in such cases. We observed that out of 132 cases involving issues of medical negligence, the practitioner was exonerated in 42 cases. The most common disciplinary action imposed was warning (21 instances). The UKMC ordered harsher measures in only 5 cases - suspension in four cases, and removal from the register in only one case.

Figure 5.9: Type of outcomes for cases involving medical negligence as adjudged by the UKMC between 2002-2022



Disposal time

The UKMC provided both the date of receipt of the complaint/*suo moto* action as well as the date of disposal of the case in 84 instances. The average time taken by the Council to dispose of the cases is 481 days and the median time is around 281 days. These are much longer than the timeline of six months prescribed under both the NMC and IMC Regulations.¹⁰⁰

We also find that the longest disposal time taken by the Council was 2887 days where the Council declared the RMP to be not guilty of medical negligence. The shortest disposal time was 7 days, where the Council took *suo moto* cognizance against an advertisement in the newspaper.

Figure 5.10: Time period between date of filing of case and date of final order for cases disposed of by the UKMC between 2002-2022

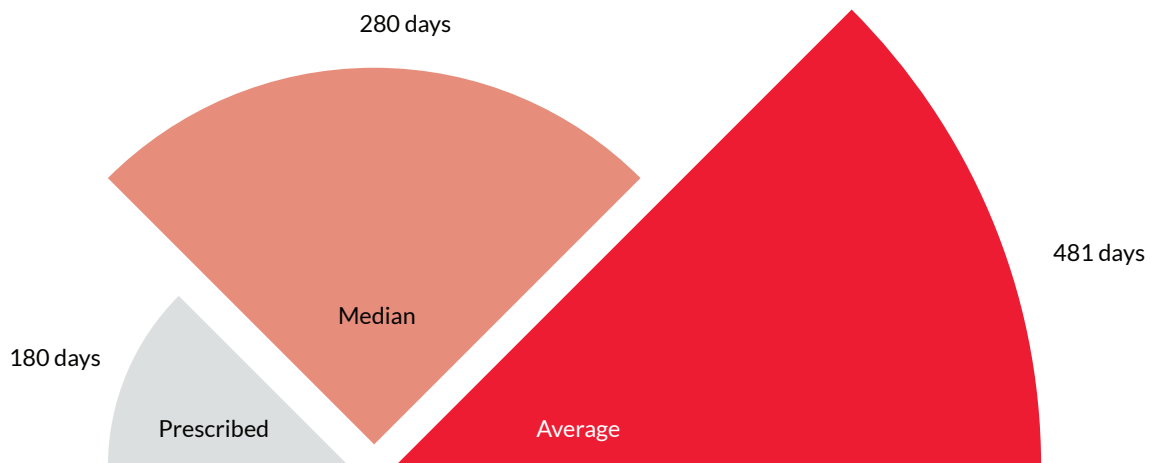


Table 5.5: Longest and shortest disposal time for cases decided by UKMC between 2002 and 2022

	Duration	Issue	Outcome
Longest disposal time	2887 days	Medical negligence	Not guilty
Shortest disposal time	7 days	Unethical advertisement	Affidavit to not repeat

¹⁰⁰ NMC Professional Conduct Regulations 2023, reg 43; IMC Regulations 2002, reg 8.4.

Key Takeaways

Both the Karnataka and Uttarakhand Medical Councils have preferred warning the medical practitioners instead of taking harsher action such as suspension or revocation of registration. Neither Acts stipulate that a medical practitioner may be sanctioned more harshly if they have a history of repeated misconduct.

It is significant to note that most SMCs have neither furnished details about complaints they have received in their RTI replies nor have they published such details on their websites. This underscores the lack of transparency of grievance redressal undertaken by Councils.

Even though the UKMC has imposed a larger variety of disciplinary action as compared to KMC, these are still lenient. Moreover, even though the UKMC empowers the Council to grant compensation to those aggrieved, the Council has not awarded compensation in any case.

Appellate Mechanisms

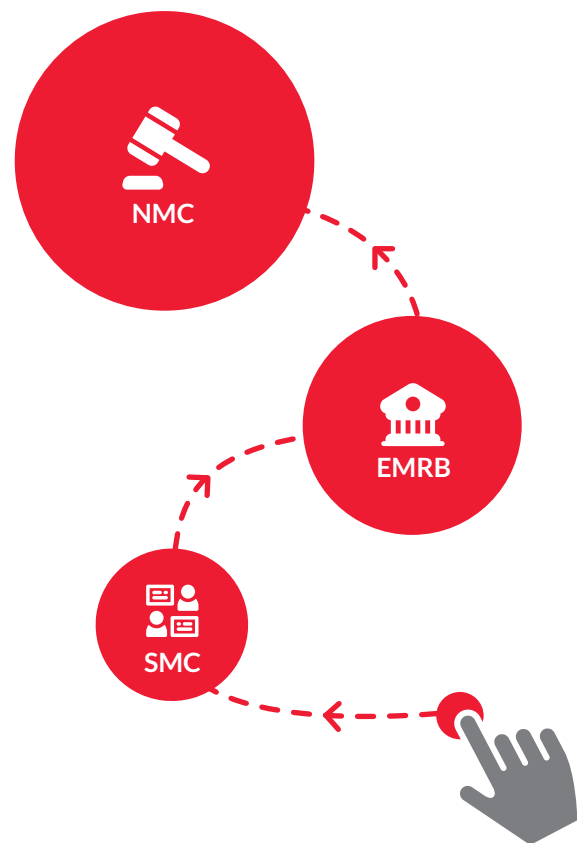
The IMC Act and the Regulations thereunder had established a single level of appellate authority, though the appellate authority differs for different grievances:

1. If 'any person' is aggrieved by the decision of an SMC regarding a complaint against a medical practitioner, they may appeal to the MCI;¹⁰¹ and
2. If a medical practitioner's name has been removed from the State Register for any reason (except for lack of qualifications) and their application for restoration of their name to the register has been rejected, then the practitioner may appeal to the Central Government.¹⁰²

Notably, while the IMC Act and Regulations allow *any person* aggrieved by an SMC's decision to file an appeal before the MCI, the NMC Act 2019 permits *only a medical practitioner* to appeal against any decision of an SMC or the EMRB. In response to the severe criticism against this limitation, the Union Health Ministry did propose amendments to the NMC Act 2019 to allow patients to file appeals against erring doctors,¹⁰⁴ but such amendments have not been enacted. At the same time, the portal on the NMC website for 'ethics appeal' continues to allow appeals to be filed by patients as well.¹⁰⁵ However, media coverage suggests that any appeals filed by patients are currently being rejected by the Commission.¹⁰⁶

Presently, the NMC Act 2019 establishes two levels of appellate authorities¹⁰³:

Figure 5.11: Appellate authorities as per the NMC Act 2019



¹⁰¹ IMC Regulations 2002, reg 8.8.

¹⁰² IMC Act 1956, s 24(2).

¹⁰³ NMC Act 2019, ss 30(3) and (4); NMC Professional Conduct Regulations 2023, reg 40.

¹⁰⁴ Taran Deol, 'Amendments Proposed to National Medical Commission Act Allow Patients to Appeal against Erring Doctors' *Down to Earth* (10th January 2023) <<https://www.downtoearth.org.in/news/health/amendments-proposed-to-national-medical-commission-act-allow-patients-to-appeal-against-erring-doctors-87043>> accessed 22 June 2023; Draft National Medical Commission (Amendment) Bill 2022, cl 8.

¹⁰⁵ 'Ethics Appeal' (National Medical Commission) <<https://www.nmc.org.in/ActivitiWebClient/open/registerEthicsHome>> accessed 1 September 2023.

¹⁰⁶ Media coverage suggests that while NMC continues to receive appeals by patients, they are rejecting them summarily. See for instance, Rema Nagarajan, 'Patients still without right to appeal state med panel decisions' *The Times of India* (14 August 2023) <<https://timesofindia.indiatimes.com/india/patients-still-without-right-to-appeal-state-med-panel-decisions/articleshow/102705610.cms?from=mdr>> accessed 20 September 2023.

In SMC Acts that do not establish an appellate mechanism such as those of Delhi, Gujarat and Goa, the two-level appellate system is particularly necessary. However, for the twenty states whose SMC Acts expressly provide that any appeal from the decision of the SMC would lie before the State Government,¹⁰⁷ it would appear that the NMC Act has created a parallel mechanism. An aggrieved person can seemingly either approach the EMRB/NMC or they can approach the State Government. However, this is not a new problem, as Regulation 8.8 of the

IMC Regulations added in 2004 stipulated that any person aggrieved by the decision of an SMC may file an appeal before the MCI.¹⁰⁸

The NMC reported in its RTI reply that it has received four second appeals against decisions of the EMRB. The decision of the EMRB was upheld in only one case. At the time when MCI was operational, it had been reported that between 2017-2019, several SMC orders sanctioning medical professionals were upheld by the MCI¹⁰⁹:

Table 5.6: SMC orders upheld by MCI between 2017 and June 2019 as per a reply filed by the Ministry of Health and Family Welfare before the Lok Sabha in July 2019

Year	Cases upheld	Percentage mentioned (presumed to be out of the total number of appeals filed before MCI)
2017	69 cases where punishment awarded	44%
2018	40 cases where punishment awarded	28.5%
2019 (up to June 2019)	28 cases where punishment awarded	46%

None of the Councils of eight states/UTs and none of the nine state governments which replied to our RTI applications reported any appeals being filed before the State Governments against the decision of the SMC.

For observing where appeals are filed in practice, the RTI replies of three states are relevant - Delhi, Goa and Telangana:

- In Telangana, the practice has presumably been to approach the High Court against the decision of the SMC instead of appealing to the State Government as per their state Act or the NMC.
- Neither the Delhi Medical Council Act 1997 nor the Goa Medical Council Act 1991 establish an appellate mechanism against decisions of the SMC themselves. However, they provide that subject to the IMC Act, the decision of the State

¹⁰⁷ These states are Andhra Pradesh, Assam, Bihar, Chhattisgarh, Haryana, Jammu & Kashmir, Jharkhand, Kerala, Madhya Pradesh, Manipur, Meghalaya, Mizoram, Odisha, Punjab, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttar Pradesh, and West Bengal.

¹⁰⁸ There have been arguments that since the IMC Act 1956 lists only the Central Government as an appellate authority, the IMC Regulations 2002 as a delegated legislation cannot introduce the MCI as another appellate authority. The Calcutta High Court has in fact held Regulation 8.8 of the IMC Regulations to be unconstitutional for this reason. See *Dr. (Mrs.) Rupa Basu (Banerjee) v State of West Bengal* WP 9740(W) of 2009, [36] and [46].

¹⁰⁹ 'Medical Negligence and Professional Misconduct by Doctors', Lok Sabha Unstarred Question No. 4558 (19 July 2019) <<https://drive.google.com/file/d/128bGzYQxyv4crTnRWFb73p6IBLMMVDpX/view?usp=sharing>> accessed 28 October 2023.

Council would be final. The IMC Act 1956 allows appeals from decisions of the State Council in relation to the removal or restoration of names in the State Register to be filed before the Central Government.¹¹⁰

1. However, it appears from the RTI replies of the Delhi SMC and Goa SMC that their decisions were appealed before the NMC/MCI.
2. Between January 2002 and September 2022, appeals were filed against 140 decisions of the DMC before the MCI. All of these have been disposed of and the decision of the DMC was upheld in 56 complaints of medical negligence/professional misconduct and overturned in 16. The RTI reply of the SMC was silent on the subject matter and the outcome of the remaining 68 complaints.
3. In Goa, one decision of the SMC has reportedly been overturned by the NMC.

Key Takeaways

The NMC Act 2019 and several SMC Acts establish parallel appellate mechanisms with no clarity about what mechanism would prevail over the other. The NMC Act 2019 establishes that the first appeal would lie before the EMRB and the second appeal before the NMC. On the other hand, State Acts allow appeals against decisions of the SMC before the government.

As medical practitioners may practise in more than one state, stipulating the State Government as an appellant authority may not be suitable.

¹¹⁰ Delhi Medical Council Act 1997, s 23(2); Goa Medical Council Act 1991, s 24(2).

Judicial Oversight of the SMCs







Judicial Oversight of the SMCs

High Courts can exercise their writ jurisdiction to adjudicate appeals against the decisions of SMCs and the NMC regarding disciplinary proceedings instituted against RMPs. The NMC Act provides that courts can take cognizance of any offence punishable under the Act only upon a written complaint from the SMC, EMRB, or NMC.¹¹¹

Occasionally, courts have acted as appellate authorities by exercising their writ jurisdiction. For instance, a patient was aggrieved by an order of the MCI by which a senior doctor was exonerated, and approached the Delhi High Court for relief.¹¹² In this case of medical negligence, since the senior doctor was not available on the day of the surgery, the procedure was performed by his junior and in place of the right foot, the left foot was operated on. The Delhi High Court reversed the order of the MCI, and found the senior doctor guilty of medical negligence, and remanded the matter to the MCI to determine the quantum of punishment. In another case, a doctor was aggrieved by an order of the MCI by which the quantum of punishment was enhanced from 'warning'

as issued by Delhi Medical Council to removal of the name from the Indian Medical Register/ State Medical Register for a period of three months.¹¹³ In this case, the High Court reversed the order of the MCI and held that the doctor cannot be found to be guilty of medical negligence simply because the patient has not responded favourably to the prescribed treatment.

The writ jurisdiction of the High Courts is also invoked where it is alleged that the NMC or the SMC, as the case may be, have not followed due process or the principles of justice when arriving at their decisions. For instance, the Rajasthan High Court reversed the MCI order for striking off a doctor's name from the Indian Medical Register on the ground that there was non-application of mind in arriving at the said order.¹¹⁴ Similarly, the High Courts can remand the matter to the MCI if the order for striking off the name of a doctor is not supported with reasons.¹¹⁵ At the same time, the Delhi High Court has repeatedly refused to interfere with the decision taken by the NMC or the SMC where due process was followed, observing that the proceedings before these authorities are in the

¹¹¹ NMC Act 2019, s 54.

¹¹² *Ravi Rai v Medical Council of India and Ors* 2018 SCC OnLine Del 10696.

¹¹³ *Ram Avtar Garg v Medical Council of India and Ors* 2015 SCC OnLine Del 10314.

¹¹⁴ *JC Sadasukhi v Medical Council of India and Ors* 2016 SCC OnLine Raj 8284.

¹¹⁵ *Ramcharan Thiagarajan v Medical Council of India, Karnataka Medical Council* 2014 SCC OnLine Kant 12215; *Praveen Garg v Medical Council of India* 2009 SCC OnLine Del 1423.

nature of peer review and unless there is any patent error or arbitrariness, a judicial review of these orders would not be merited.¹¹⁶

We also noted from the RTI replies we have received that aggrieved persons have approached the court to appeal against decisions of the SMC instead of the state government as envisaged in their respective Acts.

Key Takeaways

The degree of deference to the decisions of the SMC/MCI varies across courts. Although appellate mechanisms exist under SMC Acts, there have been instances where the writ jurisdiction of High Courts has been used instead.

Courts have reversed orders of the Medical Council of India and the State Medical Councils on grounds of liability as well as improper issuance of orders.

¹¹⁶ *Rashmi Pal v The State (The Govt. of NCT Delhi)* 2020 SCC OnLine 375; *Prem Kishore v Union of India* 2019/DHC/2339; *Krishan Lal Kumar v Medical Council of India* 2019 SCC OnLine Del 6919; *Meena Harsinghani v Medical Council of India* 2018 SCC OnLine Del 10483.

Conclusion







Conclusion

This report aimed to track the implementation of the law relating to medical councils in India, analysing the variations in laws relating to state medical councils in India, tracking their implementation, and contextualising this in light of the recently enacted NMC Act 2019. It undertakes a discussion on the law and maps the on-ground practice with the help of case law as well as responses to RTI applications which were filed before the NMC, SMCs and the state governments.

It is evident from the above observations that the law is not being enforced at all in several instances. In at least four states there is no functional SMC. Even when a primary duty of the SMCs is to maintain updated records about the RMPs practising in the state, the records on registration of medical practitioners are not being maintained properly. Not only are there discrepancies between the records maintained at the state and the Central levels, but the registers are purportedly not being updated either.

A more critical observation is that the law appears to be enforced weakly. Not only are very few complaints being filed before the SMCs, but even where filed, the action taken by the authorities has been limited to mere warnings or directions to undergo CME. Compensation or relief to the victims is not envisaged under the law for most states, making judicial proceedings the only recourse available to the aggrieved for compensation or other relief.

This report underscores that as they are, medical councils may not be robust enough as a platform to hold medical professionals accountable. Structural

changes are needed in the policy and practice of the law to make it more rigorous. While the NMC Act 2019 and the Regulations thereunder have well-intended provisions, the lack of well-rounded provisions has created confusion in several aspects. An example has been the parallel appellate mechanisms set up in the NMC Act 2019 and the SMC Acts. Possible measures to improve the governance may include:

Amendment of the law

- The NMC Act 2019 should be amended to allow appeals against orders of SMCs to be filed by patients as well, and the SMC Acts should be amended to reflect the two-level appellate mechanism prescribed by the NMC Act 2019.
- The Regulations notified under the NMC Act 2019 should be amended and their precedence over corresponding provisions in SMC Acts be clarified.
- Clear guidelines should be developed for referral of certain kinds of complaints by the SMC to other authorities that have jurisdiction, for example, complaints relating to clinical establishments.

Maintaining records and ensuring transparency

- All Medical Councils should have operational websites and publish updated details about their composition.
- In addition to publishing the updated State Medical Register in a machine-readable and searchable format, the websites of the SMC should be developed as an avenue for declaring information on doctors who have a history of professional and medical misconduct.

- Just as the procedure for applying for registration by medical practitioners has been digitised, the procedure for filing complaints by the public should mandatorily be digitised on these websites.
- A live dashboard to track the number of complaints registered, the annual institution and disposal of cases with length of pendency should be prescribed by the NMC on a time-bound basis.

Stricter adherence to law and sensitisation

- It should be ensured that there are sufficient legally qualified or experienced members who have handled disciplinary matters. In the alternative, it should be mandatory for the members of SMCs to undergo a training program to familiarise them with their responsibilities.
- Patients should be sensitised about the SMCs as possible forums for raising grievances against RMPs.

“As they are, medical councils may not be robust enough to hold healthcare professionals accountable.”

Annexure I: List of Medical Council Acts







Annexure I: List of Medical Council Acts

Table 8.1: State-wise laws governing state medical councils

State/Union Territory	Legislation	Year of Enactment
Andhra Pradesh	Andhra Pradesh Medical Practitioners Registration Act	1968
Arunachal Pradesh	Arunachal Pradesh Medical Council Act	2004
Assam	The Assam Medical Council Act	1999
Bihar	The Bihar and Orissa Medical Act	1916
Chattisgarh	Madhya Pradesh Ayurvigyan Parishad Adhiniyam	1987
Delhi	Delhi Medical Council Act	1997
Goa	Goa Medical Council Act	1991
Gujarat	Gujarat Medical Council Act	1967
Haryana	Punjab Medical Registration Act	1916
Himachal Pradesh	The Himachal Pradesh Medical Council Act	2003
Jammu & Kashmir	Jammu and Kashmir Medical Registration Act	1998
Jharkhand	The Bihar and Orissa Medical Act	1916
Karnataka	The Karnataka Medical Registration Act	1961
Kerala	The Kerala State Medical Practitioners Act	2021
Madhya Pradesh	Madhya Pradesh Ayurvigyan Parishad Adhiniyam	1987
Maharashtra	Maharashtra Medical Council Act	1965
Manipur	Manipur Medical Council Act	2009
Meghalaya	The Meghalaya Medical Council Act	1987

Mizoram	The Mizoram Medical Council Act	2010
Nagaland	The Nagaland Medical Council Act	2014
Odisha	The Orissa Medical Registration Act	1961
Punjab	Punjab Medical Registration Act	1916
Rajasthan	Rajasthan Medical Act	1952
Sikkim	The Sikkim Medical Registration Act	2005
Tamil Nadu	Tamil Nadu Medical Registration Act	1914
Telangana	Telangana Medical Practitioners Registration Act	1968
Tripura	The Tripura State Medical Council Act	2010
Uttar Pradesh	United Provinces Medical Act	1917
Uttarakhand	Uttarakhand Medical Council Act	2002
West Bengal	Bengal Medical Act	1914

Annexure II: Year of Constitution of Medical Councils







Annexure II: Year of Constitution of Medical Councils

Table 9.1: Year of constitution of state medical councils, if available

Medical Council	Year of Constitution of Council (as per their websites, if operational)
Andhra Pradesh	2004-05
Arunachal Pradesh	2004
Assam	1999
Bihar	NA
Chattisgarh	2001
Delhi	1998
Goa	1993
Gujarat	1969 (Rules under the parent Act notified in this year)
Haryana	NA
Himachal Pradesh	2011 (Rules under the parent Act notified in this year)
Jammu & Kashmir	1987
Jharkhand	2002
Karnataka	1931 (as Mysore Medical Council, renamed as Karnataka Medical Council in 1956)
Kerala	1944 (as Travancore Medical Council, renamed as Kerala Medical Council in 1953)
Madhya Pradesh	1998
Maharashtra	1912 (as Bombay Medical Council, renamed as Maharashtra Medical Council in 1960)
Manipur	2012

Meghalaya	NA
Mizoram	NA
Nagaland	2014
Odisha	1937
Punjab	NA
Rajasthan	1952 (earlier Jaipur Medical Council)
Sikkim	2000
Tamil Nadu	1914 (earlier Madras Medical Council)
Telangana	2016
Tripura	2011
Uttar Pradesh	NA
Uttarakhand	2003
West Bengal	NA

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