

Government of Bihar
Health Department

Notification

Patna, Dated- 29/10/2018

Notification No.- 2/M-17/2017- 1233(2) In exercise of the powers conferred by section 9 of the Bihar Medical Service Institution and Person Protection Act, 2011, the Governor of Bihar frames the following rules for the implementation of the subject matters, namely:-

1. Short title, extent and commencement:-

- (1) These rules shall be called the "**Bihar Medical Service Institution and Person Protection Rules, 2018.**"
- (2) They shall extend to the whole of the State of Bihar
- (3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions– In these rules, unless there is anything repugnant in the subject or context:-

- (i) "**Act**" means the Bihar Medical Service Institution and Person Protection Act, 2011 (as amended from time to time);
- (ii) "**Section**" means a section of the Act;
- (iii) "**Complain**" means allegation of violence/damage of property/ medical negligence, as the case may be;
- (iv) "**Negligence**" means negligence in medical care;
- (v) "**Property**" means any property, movable or immovable including tangible or intangible(subject to the provisions of Information Technology Act 2000) or hospital and medical records or medical equipment or medical machinery or any such property as owned by or in possession of, or under the contract of any medical persons or medical service institution;
- (vi) "**Able doctors**" mean competent doctors qualified in the related branch of medical practice;
- (vii) "**Inquiry**" means the procedure of getting expert medical opinion by the committee of able doctors;
- (viii) "**Take action**" means, to forward the result of inquiry to the concerned office for further proceedings or to act, otherwise, in the given circumstances;
- (ix) Words and expressions used herein and not defined but defined in the act shall have the meanings respectively assigned to them in the Act.



Chapter-1
(3. Rules under Section 3 & 4)

3. Precautionary and Preventive measures– With a view to prevent violence on the medical professionals and institutions, the District Magistrate and Superintendent of Police shall:-

- (i) identify the Medical Service Institutions and persons, in association with district & local health authority and medical associations, where it has reason to believe that violence may take place or there is an apprehension of reoccurrence of an offence under this act;
- (ii) security audit of aforesaid identified medical institutions under clause. 3(i) to be done by an officer not below the rank of Deputy superintendent of police . On the basis of audit report or otherwise, for security of medical institutions and health employees working there following actions shall be directed :-
 - (a) For deputations of security personal from security agencies licensed by the state Government.
 - (b) Installation of CCTV cameras in the premises.
 - (c) Arrangements of boundary wall, lighting etc.
 - (d) Any other actions/direction which may be relevant in local context.
- (iii) organize workshops on doctor-patient relationship at regular intervals, in association with the medical body, local administration and the eminent persons of the area.
- (iv) display hoardings containing the salient points of this act, at prominent places in the district.

4. The Officer-in-Charge of the concerned Police Station shall:-

- (i) identify and ensure regular patrolling around the vulnerable set-ups, in consultation with the local medical authority and association.
- (ii) act within a reasonable time, after receiving a reliable information through e-mail or a telephone call or from an aggrieved person or from a person who has reason to believe that an act of violence to Medical Service institution or Persons and damage and loss of property to institution is being or likely to be committed and in such an emergent situation, adequate police force to be deployed under direction from the concerned Superintendent of Police, to diffuse the situation for the safety of the person(s) and the institution(s) at risk.

5. Complain of Violence, under Section 3 and 4 of the Act:-

The Head of the medical service institutions where the offence has been committed or his authorized representative or any person or persons who suffered violence while delivering a medical service shall have the power to make a complaint under this Act in "Form-1" to the police officer in charge of the police station having the jurisdiction under which the offence committed.

67

6. Collection of evidence for the loss and damage:-

With the amendments brought in the Evidence Act, through Act 21 of 2000 permitting evidence collected through electronic devices as admissible in evidence. It is recommended that-

- (i) If the officer-in-charge of Police station or other law enforcing agency is of opinion that any direct action, either declared or undeclared has the potential of causing destruction or damage to medicare property, he shall avail himself of the services of video operators. For this purpose each police station shall be empowered to maintain a panel of local video operators who could be made available at short notices.
- (ii) The Still photography, video footage taken by public/medical institutions and press will be used as evidence after proper authentication and will be produced before the court.

Chapter-2

7. Complain of medical negligence, Under section 3A of The Act:-

These Rules applies to the doctors, registered under Indian Medical Council Act,1956 and/ or under the Indian Medicine Central Council Act.1970.

- (1) The victim or his/her close relative shall have powers to lodge complaint of medical negligence against a doctor or institution, in "Form-2"
- (2) A private complaint shall not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by the committee of able doctors as prescribed under section 3A of the Act, to support the charge of rashness or negligence on the part of the accused doctor;
- (3) If a complaint of medical negligence is lodged in the Police Station, the investigating officer shall, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion, by referring the matter to the concerned District Magistrate, who shall have powers to get the matter inquired by a committee of able doctors, preferably in government service, qualified in that branch of medical practice that can normally be expected to give an impartial and unbiased opinion;
- (4) On the basis of the reports of the designated committee, if there is a prima facie case of medical negligence, the investigating officer shall proceed further in the matter;
- (5) Whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the Criminal Court then before issuing notice to the doctor or hospital against whom the complaint was made, the Consumer Forum or Criminal Court shall first refer the matter to the concerned District Magistrate for expert opinion from a competent doctor's committee, specialized in the field relating to which the medical negligence is attributed, and only after the receipt of the reports that there is a prima facie case of medical

2

negligence, shall issue notice to the concerned doctor/hospital. It will be necessary to have regard to avoid harassment to doctors who may not be ultimately found to be negligent;

- (6) A doctor accused of rashness or negligence, shall not be arrested in a routine manner (simply because a charge has been leveled against him). Unless the arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself/herself available to face the prosecution unless arrested, the arrest shall be withheld;

8. Manner of investigation by the police officer:-

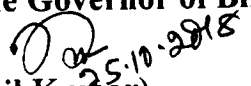
- (1) Subject to the provisions of Section- 3A of the Act, at the time of filing the complaint, the complainant shall submit, three copies of the complaint along with supporting documents of evidence pertaining to medical negligence and the names and addresses of witnesses.
- (2) On receipt of complaint, the investigating officer shall send one of the copies received from the aggrieved person to the respondent within the period of seven working days.
- (3) The respondent shall file his reply to the complaint along with his list of supporting documents, within a period not exceeding ten working days, from the date of the receipt of the documents.

9. Manner of inquiry into the complaint:-

- (1) The investigating officer after the receipt of reply, shall forward the copy of the complainant and the reply of the respondent to the Concerned District Magistrate, who will make these papers available to the committee of able doctors notified by him, under the provisions of Section 3A of the Act.
- (2) The committee of able doctors shall submit its expert opinion within a period of ten working days, after receiving the relevant papers.
- (3) The result of inquiry shall form the basis of further proceedings under this act and the provisions of law in force, at the time of complaint.

10. No Court shall take cognizance, against a doctor accused of medical negligence, unless there is a prima facie case, with sufficient evidence in the expert opinion, received in the manner, as prescribed in the Act.
11. No suit, prosecution or other legal proceedings shall lie against the Government or any person or officer authorized by the Government or the Head of a medical service institution or his authorized representative for anything which is in good faith done or intended to be done under the Act.

By Order of the Governor of Bihar,


(Anil Kumar)

Joint Secretary to Government

Memo No.- 2/M-17/2017- 1233 (2)

Patna, Dated:- 29.10.2018

Copy:- E-Gazette Section, Finance Department, with 2 copies of CD and request to publish it in Extraordinary Gazette of Bihar and provide two copies of the Gazette to Health Department for information and necessary action.

25.10.2018
Joint Secretary to Government

Memo No.- 2/M-17/2017- 1233 (2)

Patna, Dated:- 29.10.2018

Copy:- Cabinet Secretariat Department/Law Department/General Administration Department/ Finance Department/ Home Department/ PPS to Chief Secretary for information and necessary action.

Copy:- PS to Honorable Minister, Health Department/PS to Principal Secretary/ All Director-in-Chiefs, Health Services/ All Principals and Superintendents, Medical Colleges, Bihar, Patna/All Regional Additional Directors, Health Services, Bihar, Patna/ All Civil Surgeons, Bihar, Patna/ Director, Lok nayak Jai Prakash Narayan Ortho Hospital, Rajbanshi Nagar, Patna/ New Gardiner Road Hospital, Patna/Rajendra Nagar Super Speciality Eye Hospital, Patna/ Mental Hospital, Koilvar, Bhojpur/ Superintendent, Guru Govind Singh Hospital, Patna City, Patna/Infectious Disease Hospital, Agamkuan, Patna/ Lady Elgin Janana Hostital, Gaya/ MJK Hospital, Bettiah for information and necessary action.

✓ Copy:- IT Manager, Health Department for uploading on the departmental website.

25.10.2018
Joint Secretary to Government

**“FORM-1”
(See Rule-7)**

Report on incident of an act of violence and damage or loss of property under section 3 of the Act:

1	Details of the complainant or aggrieved person	
	Name	
	Age	
	Present Address	
	Permanent Address	
	Phone/Mobile No.	
2	Details of person for whom complaint is made (In case the aggrieved person is unable/unfit)	
	Name	
	Age	
	Relationship, with the aggrieved person	
	Address	
	Phone/Mobile No.	
3	Details of Incident	
	Date of Incident	
	Place of Incident	
	Name of Person(s) involved in violence and damage of property	
	Nature of violence	
	Details of damage or loss to property	
	Approximate cost of damaged property	
4	List of documents attached	
5	(a) Police assistance, needed by the complainant or aggrieved person (b) Assistance for initiating criminal proceedings and legal aid needed	
6	Instructions for the police assisting in registration of a violence and damage or loss report	

Note:-

1. Seperate sheet may be used, if needed .
2. Whenever information provided in this Form disclose an offence under the Indian Penal Code or any other Law, the Police office shall inform the aggrieved person that he can initiate criminal proceedings by lodging a First Information Report under the code of Criminal Procedure,1973(2of 1973).

Place:

Date:

(Signature of Institution Head/representative/person)

Name:

Address:

Seal:

Form-2
(See Rule-8-a)

Complain of medical negligence against a doctor/institution under section 3A of the Act:

Details of the complainant/victim-	
Name	
Age	
Present Address	
Permanent Address	
Phone/Mobile No.	
Complain in Brief:	
Name of the doctor/institution complained against	
Address of doctor/institution	
Phone/Mobile no.(if available)	
List of documents supporting Medical Negligence:	
1.	
2.	
3.	
4.	
5.	
6.	
Whether expert opinion attached?	Yes / No

Note:-

1. Separate sheet may be used, if needed.
2. Whenever information provided in this Form disclose an offence under the Indian Penal Code or any other Law, the Police office shall inform the aggrieved person that he can initiate criminal proceedings by lodging a First Information Report under the code of Criminal Procedure, 1973(2of 1973).

Place:

Date:

Seal:

(Signature of victim/relative)

Name:

Address: