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Case Reference: ID-SPG/2018/000382

**Present: Justice Ashim Kumar Banerjee (Retired), Chairman
Dr. Sukumar Mukherjee,
Dr. Makhanlal Saha,
Dr. Madhusudan Banerjee,
Dr. Maitrayee Banerjee.**

**Anirban Ghosh.....Complainant
- Versus-
Columbia Asia HospitalRespondent**

Heard on: June 18, 2019.

Judgment on: August 22, 2019

Mrs. Jyostna Ghosh aged about 69 years 11 months was admitted in the clinical establishment on October 26, 2017 at about 3.18 A.M. under Dr. Santosh Maheswari with the complaint of shortness of breath. She was found to be having hemoglobin level at 9.4. Her albumin level was low. The hospital authority, however, did not conduct LFT test. Suddenly on October 27, 2017 her hemoglobin level had gone down to 7.2 from 9.4. The blood transfusion started but was abruptly stopped in the midway without assigning any reason to the patient party. RMO checked her in emergency and she was transferred to

ICU Bed No.9. Although there was no necessity to admit her in ICU because the patient was having only shortness of breath. She had no other problem. The concerned doctor checked her after six hours of admission. The pulmonologist checked her on October 26, 2017 and left for Canada on the very next day. It was not known to the complainant as to why Dr. Roy was referred to when he was scheduled to leave the country on the very next day. Being dissatisfied with the deficiency of service, the complainant got the patient discharged under DAMA (Discharge Against Medical Advice) on October 31, 2017.

The patient ultimately died, however, not at the clinical establishment. The complainant is the son of the deceased patient. He lodged the complaint on May 6, 2018 alleging serious issues as to medical negligence as well as billing. The hospital authority filed their response. According to them, the complaint was **“false, frivolous, vexatious”** and with the **“sole motive to unjustly enriching himself”**. It was **“gross abuse of the process of law”**. According to clinical establishment, patient was on the road of recovery with an advice of continuing antibiotics. She was shifted to HDU on the second day, i.e. on October 27, 2017. All efforts from their end were there to provide all treatment and close monitoring of health condition through appropriate investigation at their end. The health condition was timely updated to the complainant and his family members present at the hospital, being the complainant's father and sister, Sri Srikanta Kumar Ghosh and Mrs. Gopa Ghosh.

On October 31, 2017, the patient party was informed of need to shift the patient in higher set up being ICU. However, they refused ICU management and got the patient discharged at about 6.31 p.m. on the said date. The complainant filed rejoinder dealing with the contentions of the clinical establishment. He was consistent on the deficiency of service and medical negligence.

We heard the complainant on the date mentioned above. The complainant would allege, the clinical establishment failed to furnish complete medical records. Mr. Arindam Banerjee representing the clinical establishment agreed to give print out of the medication chart that they maintained online. During hearing, the complainant was consistent in narrating his experience for six days hospitalization of her mother. The clinical establishment denied each and every contention of the complainant and reiterated what they had contended in their written submission.

We have considered the rival contentions on behalf of the medical experts present in the panel. Dr. Saha gave his opinion which is quoted below:-

Mrs. Jyotsna Ghosh 69 years 11 months was admitted at CAH on 26.10.2017. at 3.18am under Dr Santosh Maheswari. Patient was seen by on duty RMO Dr Subrata Bera on admission. Discussed with Dr Maheswari and necessary advice was given. Reviewed by Dr Shyam Sundar Roy at 4.25am and at 8.47 am and necessary advice given. Dr S. Maheswari saw the patient at 9.06am on 26.10.17 Dr maheswari advised to continue same treatment and

advised for shifting the patient to HDU and referred the patient to pulmonologist Dr D.J Roy. Patient seen by Dr D.J.Roy on 26.10.17. at 12.37pm and necessary advise given.

Patient was seen by Dr Dipankar Sarkar on 26.10.2017 at 2.57pm and advised to continue same treatment. No referral to Dr Dipankar Sarkar was made by Dr Maheswari. Seen by Dr Maheswari on 26.10.17 at 6.29pm and advised to continue same treatment and refer the patient to Dr Sujay Maitra. Seen by Dr Maheswari on 27.10.17. at 9.23am. No detail clinical note is written. Only advice for referral to Dr Sujay Maitra for abdominal condition. Seen by Dr Abhishek Sharma at 9.42 am and noted the clinical details and advised to continue same treatment. Patient reviewed by Dr Dhrubajyoti Roy on 27.10.17 at 12.17pm and advised for sputum for AFB and advised to continue all.. Seen by Dr Sujay Maitra on 27.10.17 at 12.32pm and advised to do a Straight X ray abdomen. Dr Maitra reviewed the patient at 1.52pm on 27.10.17, seen the x ray plate and necessary advise were given and asked for a surgical opinion. Patient was seen by Dr Debabrata Bose on 27.10.17 at 5.24pm and necessary advise given. Patient seen by Dr Maheswari on 27.10.17 at 7pm. Refer the patient to Dr Subhabrata Ganguly gastroenterologist as per wish of patient party. Advised for transfer of the patient to single room from HDU. Seen by Dr S. Maheswari on 28.10.17. at 8.56am and advised for Inj Human albumin and asked again for transfer to single room. Seen by Dr Abhishek Sharma on 28.10.17. and noted that Dr Dr Subhabrata Ganguly is not available. Reviewed by Dr Abhishek Sharma on 28.10.17. at 9.51am and advised to continue all. Seen by Dr Maheswari on 28.10.17. at 5.37pm and advised to continue same and refer the patient to Dr Tanveer Reza for opinion. Note by Dr Dibya Shankar Dawn on 29.10.17 at 8.57am asking Dr Tanveer Reza for review. Seen by Dr Maheswari on 29.10.17. at 9.21 am and advised for spirometric exercises.

Seen by Dr Dipankar Sarkar on 29.10.17 at 12.32pm and advised to continue all and to continue cardiologist team advice. Seen by Dr Santosh Maheswari on 29.10.17. at 9.14pm and advised for ABG and to continue others. Seen by Dr S. Maheswari on 30.10.17 at 9.51am and refer the patient to Dr Sujoy Maitra and Dr Tanveer Reza. Seen By Dr Sujoy Maitra on 30.10.17 at 11.55am. Advised for CECT abdomen, some blood investigations, to start TPN and family explained about the guarded prognosis. Seen by Dr Tanveer Reza on 30.10. 17 at 1.51pm and advised some more investigations. Seen by Dr Alope Kundu on 30.10.17. at 3.10pm and counseled patient relatives to decide for CECT abdomen and thorax. Seen by Dr S. maheswari on 30.10.17. at 6.39pm and requested Dr Tanveer reza to see the patient both in morning and evening. Note by Dr Alope kundu on 31.10.17. at 1.23am advising for 1 unit blood transfusion. Seen By Dr Maheswari on 31.10.17 at 9.46am and refer the patient to Dr Ranjan Kr. Sharma . Seen by Dr Shurti Chakraborty on 31.10.17. and referral note to d Sharma and Dr Reza rewritten. Seen by Dr Ranjan Kr. Sharma and did not advise further CV drugs. Reviewed by dr Shruti chakraborty again on 31.10.17 at 1.15pm and 1.31pm. Seen by Dr Tanvir Reza on 31.10.17. at 1.51pm. and advised to change antibiotics, referral o surgery, nephrology, family updated about the patient condition. Seen By Dr Shruti Chakraborty on 31.10.17 at 2.16pm and noted to follow advise of Dr Tanvir Reza. Reviewed by Dr Shruti chakraborty on 31.10.17 at 2.37pm and 2.40pm. Seen By Dr Jayanta Dutta on 31.10.17 at 3.26pm. and to shift the patient to CCU , blood for urea , creatinine and Na ,K and fluid challenge. Note by Dr Shruti Chakraborty on 31.10.17. at 4.45pm mentioning refusal by party regarding shifting of patient to ICU. Seeb by Dr S. Maheswari on 31.10.17. at 5.53pm. and advised to continue treatement

suggested by Dr Tanvir Reza and Dr Jayanta Dutta. No further notes available in BHT after 5.53pm.

Patient's son has complained before the commission regarding negligence of treatment and also alleged treatment has worsened her condition and that led to ultimate death and held the doctors responsible for this negligent treatment. Although he desired to get the patient admitted under a pulmonologist, his mother was admitted under consultant physician Dr S. Maheswari. He alleged that after admission on 26.10.17 Dr Maheswari came on the next day morning to see the patient.

He was charged twice on a single day for keeping her in isolation ICU. The management and the doctors have misbehaved with them. His mother was referred to Dr D.J. Roy pulmonologist who has seen her on 26.10.17 and 27.10.17. After that he left for abroad. Mr. Ghosh raised a point why then the patient was referred to Dr D.J. Roy?

Mr Ghosh alleged that too many referral was done with the motive of earning more money by doctors. Although ABG report on 29.10.17 showed worsening of condition of patient, no doctor visited her for about 12 hours. Mr Ghosh questioned why Dr Shruti Chakraborty referred the patient to Dr Jayanta Dutta nephrologist?

During the course of treatment patient was seen by good number of consultants on some with referral and some without referral note from Dr S. Maheswari. Mr Ghosh alleged he was not counselled regarding so many referrals. Mr Ghosh alleged that charges for different investigations are very high in CAH. Some reports took long time to arrive which delayed the treatment.

Albumin injection was prescribed for 3 doses but he paid for 4 inj of Albumin. Large number of surgical consumables are used which added to the high bill. Although bill was raised for 2 units of blood, patient was transfused only 1 unit of blood.

Consultation fees for Dr Abhishek Sharma was charged twice on a single at a span of 30 minutes. The investigations report showed Dr Sabyasachi Mitra as the referring physician who was not associated with treatment of Ms. Jyotsna Ghosh. Mr Ghosh was not counselled regarding the use of costly antibiotics.

When he wanted DAMA, the discharged was delayed for adjusting the bill for the dress and the blanket that was being taken away along with the patient.

The commission has gone through the medical records and affidavit submitted by the complainant and the CE, heard both the parties at length.

Observation and comments:-

This elderly lady was admitted with respiratory distress and has multiple comorbidities. After admission necessary treatment was initiated after discussion with Dr S. Maheswari. Dr Maheswari has referred the patient to a number of consultants. The medical record submitted by the CE does not show that patient party was counselled by the consultant Dr S. Maheswari regarding these referrals also regarding patient deteriorating conditions.

There was not much of advice from Dr Maheswari regarding the treatment planning. He just relied on the advice given by different other consultants. Everyday Dr Maheswari charged for 2 visits in morning and evening.

The question of medical negligence is not within the purviews of the commission and the complainant may approach WBMC for redressal

Consultation fees charged against the RMO on duty Dr Abhishek Sharma, Dr. Alope Kundu and Dr. Shruti Chakraborty. This is true that 2 consultation fees were charged for Dr. Abhishek Sharma on 29.10.17 at a gap of 30 minutes.

Charging consultation fees on account of RMO is not justified as they were only following advice given by the consultants. In fact

levying 2 fees for one RMO at an interval of 30 minutes amounts to gross malpractice by the CE.

Patient was admitted on 26.10.17 late night at 3am and was discharged on 31.10.17. at 5pm. Patient stayed for 5 days(5 x 24 hours) and 14 hours . Patient had to pay bed charges for 7days. This happened because of hospital policy of fixed time check in. The commission should come up with some directive in this aspect.

This is true that a large number of surgical consumables has been billed. It is difficult to comment whether such huge amount of consumables were at all used by the patient.

Patient was charged for Blood sugar check by glucometer. Astonishingly separate bill was levied for Glucostrip and the lancet used for this sugar estimation. This amounts to unethical practice by the CE.

Throughout the records there was no documentation of any counseling with the patient party.

Dr. Saha, in his opinion, gave details of the treatment that could be found in the medical records. In his observation, he would, however, refer to various infirmities that would be as follows: -

- I. The medical records did not show that the patient party was counseled by Dr. Maheswari regarding various referral as also the patient deteriorating condition.
- II. There was not much advice from Dr. Maheswari regarding treatment plan. He would just rely on the advice of various consultants who examined the patient on being referred to by Dr.

Maheswari. However, Dr. Maheswari charged fees every day twice, morning and evening.

- III. Consultation fees were charged against the Resident Medical Officers on duty that in our view, was not justified as it is always inclusive of the bed charges in ICU. More over, two consultation fees charged on account of Dr. Abhisek Sharma with a gap of 30 minutes, is something most unusual. The patient was admitted at 3.00 A.M. on October 26, 2017 and she was discharged on October 31, 2017. She should have been charged for six days whereas she had to pay for seven days accommodation.
- IV. Large number of surgical consumables were billed. We are not sure whether those were at all used by and / or for the patient. The blood sugar was tested by glucometer. However, separate charge was levied for glucostrip and the lancet used for test. This was an unethical practice.

From the medical records, the pleadings and the rival contentions, it is apparent, Dr. Maheswari, under whose care the patient was admitted, mechanically referred to various consultants and acted merely on their advice although he charged twice a day. His conduct is to be judged by the Medical Council. However, we cannot brush aside the fact that the patient was admitted in the clinical establishment and not directly under Dr. Maheswari. Hence, the

hospital authority cannot avoid their responsibility, particularly on the counseling aspect. Similarly, the billing issue referred to by Dr. Saha, in my view, was justified.

If we sum up the issues highlighted above, we would find, those would principally relate to billing issue. When a patient is admitted in a hospital, the bed charges should be inclusive of the charges on account of RMO particularly when the patient was in ICU. Moreover, fees for Dr. Sharma, RMO, charged on a particular day with an interval of only 30 minutes, is quite abnormal. This would indicate inflated billing as the RMOs are usually on the regular pay roll of the clinical establishment. The comment of Dr. Saha on consumables also cannot be brushed aside.

The hospital was also guilty of lack of counseling as it is apparent from the medical records, particularly the bed head ticket. It is difficult to actually assess the amount that was charged in excess.

We feel, interest of justice would be subserved if we impose a lumpsum compensation of Rs.50, 000/- on the clinical establishment.



We direct the clinical establishment to pay the said sum to the complainant within a period of one month from date. The clinical establishment would submit report of compliance immediately thereafter.

Sd/-

ASHIM KUMAR BANERJEE

We agree,

Sd/-

Dr. Sukumar Mukherjee,

Sd/-

Dr. Madhusudan Banerjee,

Sd/-

Dr. Makhanlal Saha,

Sd/-

Dr. Maitrayee Banerjee

Authenticated

[Signature]

ARSHAD HASAN WARSI
WBCS (Ex)
Secretary
West Bengal Clinical Establishment
Regulatory Commission
&
Joint Secretary
Health & F.W. Department