



Government of Rajasthan
Directorate of Medical Health & Family Welfare
State P.C.P.N.D.T. Cell
Rajasthan, Jaipur

State PCPNDT Cell/2011/Cir/ 9888

Date 21/12/11

CIRCULAR NO 13/2011

Subject:- Keeping of Form "F" along with personal record of patient in safe custody under the PCPNDT Act 1994 and to prevent the unauthorised access of such records.

1. The undersigned is directed to invite attention to provisions contained in The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter called The PCPNDT Act), Medical Termination of Pregnancy Act 1971 (hereinafter called The MTP Act) and The Right To Information Act 2005 (hereinafter called The RTI Act) which provides for preventing the unauthorised access of form "F" along with personal records of patients sent from sonography centres.
2. It has been observed during correspondence with Dist PCPNDT cells and enquiries of complaints received against sonography centres that photo copies of Form "F" under the RTI Act, which is not in accordance with law. It has been found during the enquiry that photo copies of Form "F" which were enclosed with complaint against centres were not issued by the concerned CMHO and original Form "F" of those photo copies were found missing from the records of CMHO Office. It causes grievous concern for maintenance of records under the PCPNDT Act.
3. It has been also observed that many RTI Act application asking for copies of Form "F" have been considered by the District CMHO Jaipur I & Jaipur II and copies of forms "F" were issued, which requires due attention of the department. This matter attract provisions of RTI Act as well as other laws because Form "F" is the personnel records of pregnant women, whose disclosure attract to invasion into the patient's right to privacy and attract provisions of MTP Act too.
4. It has been further recently brought to notice of the directorate that Form "F" are not being kept in the safe custody and are laying in the common place in inappropriate manner within the reach of every employee of the office at CMHO Office Jaipur I & Jaipur II. There is not sufficient place or separate room for keeping the personal medical records of patients as per intention of the provision of the PCPNDT Act as well as above said laws. It requires directions to be issued to concerned officers to keep medical Form "F" of patients in safe custody with appropriate manner and access of such information may be restricted subject to condition under the RTI Act.

CIRCULAR NO. 13/2011

CIRCULAR NO. 13/2011

52

5. In this context it is entirely appropriate to mention Legal scenario as follows :-

The applications which are received under RTI Act asking for photo copies of Form "F" should be viewed under the entire context of laws and should be analysed properly under the provisions of the RTI Act, keeping in view the provisions of MTP Act and the matter recently decided by the Hon'ble Bombay High Court regarding the submission on Form "F" and images of patients stored in silent observer equipment embedded with sonography machine.

The provision of the MTP Act and PCPNDT Act are reflecting on same panorama on maintenance of record as per parameter of pregnancy related information. After filling of form "F" for pregnant women in continuation of that termination of pregnancy take place if required. Filing of form "F" is mandatory for pregnant women under the PCPNDT Act. There are Columns in Form "F" as follows:-

- 18. Was MTP Advised/ conducted?
- 19. Date of MTP which carried out.

The MTP Act does not permits the disclose of any information related to termination of pregnancy which also attract to provisions regarding maintenance of record under PCPNDT Act in the same manner on unwarranted invasion of the privacy of the individual. As mentioned above Form "F" is same document which bear information for pregnancy along with MTP. Thus form "F" is protected document, which covered under MTP Act too.

6- Provisions of maintenance of records in safe custody along with secrecy under the MTP Act are as follows:-

MEDICAL TERMINATION OF PREGNANCY REGULATIONS, 2003

4. *Custody of forms, -*

(1) *The consent given by a pregnant woman for the termination of her pregnancy, together with the certified opinion recorded under section 3 or section 5, as the case may be and the intimation of termination of pregnancy shall be placed in an envelope which shall be sealed by the registered medical practitioner or practitioners by whom such termination of pregnancy was performed and until that envelope is sent to the head of the hospital or owner of the approved place or the Chief Medical Officer of the State, it shall be kept in the safe custody of he concerned registered medical practitioner or practitioners, as the case may be.*

(2) *On every envelope referred to in sub-regulation (1), pertaining to the termination of pregnancy under section 3, there shall be noted the serial number assigned to the pregnant woman in the Admission Register and the name of the registered medical practitioner or practitioners by whom the pregnancy was terminated and such envelope shall be marked "SECRET".*

(3) Every envelope referred to in sub-regulation (2) shall be sent immediately after the termination of the pregnancy to the head of the hospital or owner of the approved place where the pregnancy was terminated.

(4) On receipt of the envelope referred to in sub-regulation (3), the head of the hospital or owner of the approved place shall arrange to keep the same in safe custody.

(6) On every envelope referred to in sub-regulation (1), pertaining to the termination of pregnancy under section 5, there shall be noted the name and address of the registered medical practitioner by whom the pregnancy was terminated and the date on which the pregnancy was terminated and such envelope shall be marked "SECRET".

Explanation, -

The columns pertaining to the hospital or approved place and the serial number assigned to the pregnant woman in the Admission Register shall be left blank in Form I in the case of termination performed under section 5.

5. Maintenance of Admission Register, -

(3) Admission Register shall be a secret document and the information contained therein as to the name and other particulars of the pregnant woman shall not be disclosed to any person.

6. Admission Register not to be open to inspection, -

The Admission Register shall be kept in the safe custody of the head of the hospital or owner of the approved place, or by any person authorized by such head or owner and save as otherwise provided in sub-regulation (5) of regulation 4 shall not be open for inspection by any person except under the authority of law :-

Provided that the registered medical practitioner on the application of an employed woman whose pregnancy has been terminated, grant a certificate for the purpose of enabling her to obtain leave from her employer ;

Provided further that any such employer shall not disclose this information to any other person.

7- In context of a recent case of the PCPNDT Act, regarding submission of form "F" and maintenance of records, observation held by Hon'ble Bombay High Court that access to the information contained in the sonography test by any other person would be subject to invasion into the patient's right to privacy are as follows:-

(HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION (WRIT PETITION NO. 797 OF 2011) Dr.Jignesh Gokuldas Thakker, Versus Union of India & others. Judgment Pronounced on: 26 August 2011. CORAM: MOHIT S. SHAH, C.J. & SMT. R.P.SONDURBALDOTA, J.)

In this petition, the petitioner has challenged the action of Collector and District Magistrate, Kolhapur in issuing Circular dated 10 March 2010

CIRCULAR NO. 13/2011

2

44
whereby all doctors, sonologists and radiologists practicing in Kolhapur District are called upon to install device 'Silent Observer' in their sonography/ultra-sound machines. According to the petitioner, this machine and its software enables the Collector to directly review at district headquarters at Kolhapur to scan images of the patient which is illegal, against the provisions of the Act and invades privacy of the patients. It is contended that under the Rules, the ultra-sound clinics and other bodies governed by Act and the Rules are given time upto 5th day of the next month for submitting information in the format which is to be signed by the doctor and the patient. However, public notice dated 14 January 2011 (exhibit 'F') issued by the Collector and District Magistrate requiring the doctors/sonologists/radiologists to transmit form -F on-line within 24 hours is without authority of law.

(Para-4)

At the hearing of the petition, the learned advocate as well as the learned counsel for the petitioner sought discharge, as the Coordinator of the petitioner-association himself desired to argue the case. Accordingly, Dr. Jignesh G. Thakker, Coordinator of the petitioner-association made the following submissions:-

(i) The impugned letter/circular of the Collector and District Magistrate, Kolhapur requiring the doctors/ radiologists /sonologists to submit form 'F' is without authority of law and not supported by any provision of the Act or the Rules.

(ii) The patient gives consent for sonography test to be conducted by the concerned doctor/radiologist/sonologist and gives no consent for giving access to the information contained in the sonography test to any other person. Hence, there is invasion into the patient's right to privacy.

(iii) The sonography test is undertaken by a pregnant woman in view of faith and trust on the radiologist/sonologist/doctor that all the information relating to the test will remain confidential and private. However, the impugned actions of the Collector and District Magistrate, Kolhapur result into breach of confidentiality and privacy and therefore, constitute an offence punishable under section 72 of the Information Technology Act, 2000

(Para-13)

Having regard to the aforesaid principles and considering the matter in the factual backdrop already highlighted hereinabove that the information contained in 'F' form submitted on-line is submitted only to the Collector and District Magistrate and that except the authorized officer no third party can have access to it and that the information contained in the silent observer remains embedded on the ultrasound machine and that after analysis of the information contained in 'F' form submitted on-line, the appropriate authority or the officer authorised by the authority has to access the information contained in the silent observer including the visual images, we are of the considered opinion that there is no violation of the doctor's duty of confidentiality or the patient's right to privacy.

(Para-40)

Before parting with the matter, in order to allay an apprehension that any person, other than the appropriate authority or a medical person may have access to such information, we make it clear that the appropriate authority shall not allow access to such data stored in a silent observer to a non-medical officer except himself and senior officers not below the rank of Deputy Collector and that no access shall be given to such images in silent observer to any lower officer of the Revenue Department or to any officer in the Police Department below the rank of Deputy Superintendent of Police, except when such information is required in connection with or, for the purpose of registration of an offence. As regards medical personnel, only medical officers of the rank of Civil Surgeon or Deans of medical college or officers-in-charge of the Primary Health Centre shall be given access to the images in the silent observer. In our view, it will be open to the radiologist/sonologist/doctor Incharge of ultra-sound clinic to require that such images in a silent observer may be accessed by such a medical officer in the presence of the appropriate authority or an officer authorised by the appropriate authority.

(Para-43)

Subject to the above observations, Hon'ble High courts find no merit in this petition. The petition is accordingly, dismissed.

8- The provision of the RTI Act is follows:-

THE RIGHT TO INFORMATION ACT, 2005

Section 8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. any citizen,—

9- Regulations for Keeping of Form "F" along with personal records of patients in safe custody under the PCPNDT Act 1994 and to prevent the unauthorised access of such records :-

As mentioned above, after having regard to the context of entire laws on this issue and placing reliance upon citation of Hon'ble Bombay High Court regarding directions upon access of information of pregnancy including Form "F". It is understood that access of Form "F" is protected under Section 8 (1) (j) of RTI Act 2005, which would otherwise cause unwarranted invasion of the privacy of the individual unless it should be decided at appropriate forum as per intention of the RTI Act.

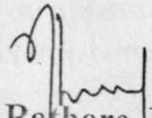
With a view to above mentioned facts the matter has been examined and it has been further decided that keeping of Form "F" along with personal

CIRCUULAR NO. 13/2011

50
records of patient shall be ensured in safe custody as per provision of the PCPNDT Act. The unauthorised access of such records should not be allowed and All District Nodal Officers & CMHO's are directed that:-

- (1) All records maintained under the PCPNDT Act shall be examined and ensured that all the form "F" along with personal medical records of patients shall be kept in safe custody in separate room and shall not allow access to such information to unauthorised person against the laws.
- (2) Custodian of such records along with CMHO would be held responsible if unauthorised access of such information is found and departmental enquiries on misconduct would be initiated against such person for non compliance of this order.
- (3) Access of such information under RTI Act is restricted subject to the condition of the provision of the section 8 (1) (j) which would cause unwarranted invasion of the privacy of the individual accordingly, Unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.
- (4) All such records obtained under the PCPNDT Act shall be kept as directed and send a compliance report of action taken within 15 days with satisfaction that all such records have been placed under the safe custody and unauthorised access is not possible in any manner.

This issue bears approval of competent authority and order shall take effect immediately.


(Gayatri Rathore, I.A.S.)
Special Secretary (FW)
Medical and Health Department
Rajasthan, Jaipur.

State PCPNDT Cell/2011/Cir/

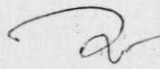
Date

Copy to information and necessary action:-

1. PS to Principal Secretary, Medical Health Dept., Rajasthan Jaipur.
2. PS to Chairperson, State Appropriate Authority & Special Secretary Health, Rajasthan Jaipur.
3. Director (FW) & State Nodal Officer, PCPNDT, Medical & Health Services, Rajasthan, Jaipur.
4. All Dist. Appropriate Authorities & Dist. Collectors, Rajasthan.
5. All Joint Directors Zones, Medical & Health Services, Rajasthan.
6. Addl. Director (RCH) Medical & Health Services, Rajasthan, Jaipur.
7. Deputy Director (RCH) & Incharge State PCPNDT Cell, Medical & Health Services, Rajasthan, Jaipur.

CIRCULAR NO. 13/2011

8. All Dist. Nodal Officers & CMHO's Rajasthan.
9. All Sub-District Appropriate Authorities, Rajasthan.
10. Health Manager/Legal Expert/Crime Branch, State PCPNDT Cell, Rajasthan, Jaipur.
11. Central Server Room, HQ Jaipur, Rajasthan.


Director (RCH) &
State Nodal Officer,
Medical and Health Services
Rajasthan, Jaipur.


CIRCULAR NO. 13/2011

