



KERALA GOVT.MEDICAL OFFICERS' ASSOCIATION

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No. 28/2020/KGMOA

Date 31.03.2020

To

Principal Secretary to Government
Health & Family Welfare Department
Govt. of Kerala

Sir,

Sub- directions issued by the taxes department regarding the issuance of certificate on Alcohol Dependence Syndrome [ADS] – reg

Ref – G O No 266/2-02- /Taxes Dept dated 30.3.2020

With reference to the above government order the following aspects are brought to your notice for immediate actions.

1. The organization represents the medical officers in the state who work under the Director of Health Services. The present grievances highlighted have a larger bearing on the medical practitioners under the government as well as the public in general. We request your immediate attention to the matter so as to redress the grievances of the medical officers, who will otherwise be forced to act against the Medical Council of India Regulations governing the registration of physicians, the conduct, etiquette and ethics etc.
2. In the wake of the lock down declared in the whole of the country by the Central Government and in the State of Kerala by the State Government the BEVCO outlets and Bars in the state remains closed. This has resulted in the non availability of



Alcohol in the state, which has led to the reporting of cases relating to Alcohol Dependence Syndrome { ADS for short}. As an organization representing the medical officers in the state we are not blind to the occurrence of such cases in the given scenario. But as medical professionals our members as well as the organization cannot vouch the stand adopted in the government orders referred above, which in an indirect way advises the use of alcohol for the treatment of the ADS. A reading of the above government order shows that the said order was issued with the primary aim of making grounds to issue permits regulating the sale of IMFL during the period of lock down. We are not challenging or against the powers vested in the Taxes Department or the Excise authorities in regulating such sales in the state. But we are strongly against the Taxes department or the Excise department issuing directions to the medical officers to issue certificates to enable the issuance of permits for the sale of IMFL in the state. As medical professionals our members are not bound to issue such certificates to enable the sale of IMFL which cannot be deemed a part of the treatment for ADS and which cannot be considered as a remedy, medicine or drug in the treatment process. We would like to substantiate our stand based on the following:

- a. The above referred order is issued by the Taxes department with an intention to regulate or permit the sale of IMFL in the state during the lock down period. The Taxes department is not competent to issue such directions to the medical officers who are under the administrative control of the Department of Health and Social Welfare.
- b. The order directs the persons or the relatives of the persons with ADS to approach the health institutions and to obtain out patient ticket so as to get themselves examined by the medical officer. Thereafter the medical officer is directed to issue a certificate stating that the person is having withdrawal symptoms. In effect the health institutions as well as the medical officers are assigned the status of a certifying agency through the present order. This is a challenge on the noble profession and the direction would make the medical officers act against the regulations of the MCI governing the profession.
- c. The scheme as contemplated in the present government order envisages a situation where Alcohol or IMFL is considered as a remedy for the ADS. As members of the medical profession our members cannot support such a stand. Alcohol is not considered a remedy in the treatment of ADS. This is evident from the guidelines issued by the DHS for the management of Alcoholic Addition.



- d. The medical officers of the state are already directed by the DHS to act in terms of the specific guidelines issued in managing the ADS and related issues. The Guidelines contemplates the treatment of the patient and specific directions of the medicines to be administered are also included in the said guidelines. Our members are bound by the said guidelines and consumption of alcohol along with the medication is likely to lead to serious complications. Considering this aspect even the decision taken by the taxes department to issue permits to the persons who are certified with the withdrawal symptoms would prove dangerous.
- e. Another important aspect which is forthcoming from the present government order is that based on the certificate to be issued by the medical officers, the excise department is deciding on the issue of permit to the person. Thus by issuing a certificate the medical officer is making the excise official a party to the treatment process which is not permitted by the regulations issued by the MCI. A physician shall not under any circumstance make a unqualified person treat a patient. The taxes department has not considered the above aspect while issuing the present order.
- f. The duty of the doctor as well as the health institutions is to provide treatment to the patients, who approach them. Once a patient seeks the advice of the doctor for the withdrawal symptoms it is the duty of the doctor to provide him the treatment and it is against the ethics of the medical profession to send him back with a certificate vouching his symptoms. Once a person registers as a patient, he is to be given the treatment and any failure to provide the treatment may lead to further trouble to the medical officer at a later stage. Similarly if the consumption of the alcohol along with the medicine leads to the complication the medical officer could be held responsible for the same. Considering this the organization cannot support the present government order.
- g. The state government and the Central government has formulated several schemes to treat and rehabilitate the alcoholics and in none of the norms adopted in those schemes, a similar situation as contemplated in the present government order is provided. The medical officers are bound by the norms prescribed by the health department and not by the taxes department. So we are of the view that the present government order is only to be discarded in the light of other directions issued by the concerned authorities.



- h. The ADS, as an ailment comes under the ambit of the Mental Healthcare Act 2017, and the medical officer, when presented with a patient of the said nature is duty bound to refer the person to a recognized mental health institution. It is not possible for the medical officer to send him back with a certificate in the light of the provisions contained in the Mental Health Act. The Mental Health Act also burdens the government with certain responsibilities towards the mentally ill patients. But any endeavour to discharge the said duties at this point of time could be suicidal in the wake of the pandemic. It is also to be noted that while certifying a person as having ADS, a medical officer is in a way certifying him to be affected by a mental illness. A certificate of the said nature is not expected to be issued in a routine manner as the same would have serious repercussions even on the civil rights of the person concerned. The possibility of misusing the present order also cannot be ruled out.
- i. The state has formulated the Abkari Policy for year 2020-21 highlighting the need to reduce the consumption of Alcohol in the state. This is in tune with Article 47 of the Constitution of India. The state is competent to regulate the sale of IMFL in the state and the same is regulated by the provisions contained in the Abkari Act. The provisions contained in the Abkari Act do not contemplate the grant of individual permits, whereas the sale itself is done through the governmental agency. It is settled law that an Act cannot be amended through executive orders. The sale of IMFL is regulated in the state through the Abkari Act and the rules issued under the act. None of the provisions contemplate that permits to individuals could be issued on the basis of the medical certificates from the medical officers. The present government order necessarily incorporates a new provision governing the sale of IMFL in the state. It is not permissible through an executive order.
- j. The present order is intended to regulate the sale of IMFL during the lock down situation in the state. The Taxes department should evolve a system to ensure sale of IMFL ensuring the social distancing which is intended to be achieved through the lock down imposed. This was effectively done in other states by the excise officials monitoring the seller points and ensuring the overcrowding. Instead of devising such methods the taxes department should not have put the burden on the medical professionals who are already overburdened with responsibilities in the wake of the pandemic.



- k. The limited resources under the DHS is presently carrying out the arduous task of monitoring the pandemic. The whole workforce is deployed in the different health institutions without even keeping a reserve force. In any type of pandemic it is necessary to have a reserve force but under the DHS the whole work force is being put into service unlike in the case of the medical officers under the DME. The members of the association are working without any complaint to fight the pandemic. But the present government order is likely to result in the flooding of the PHC, CHC and other hospitals for the certificate contemplated therein. In every possibility the medical officers would be under much stress once such an eventuality happens. It is an accepted and settled finding that the criminal tendencies could increase as a part of the ADS and the likelihood of a law and order situation in the hospitals not remote. It is also to be noted that in the wake of the interim bails granted to the under trial prisoners with an intention to decongest the jails, the possibility of the criminal crowding the centres could not be ruled out. It would not be possible to manage the persons and their relatives in the given circumstances by the minimum staff available in the centres.
- l. The nature and duties cast upon the medical officers in the PHCs and CHCs do not envisage the situation of treatment to the persons with mental ailment. They could only refer them to appropriate mental health institutions. When the patient is presented before such centres for treatment, the medical officers have to follow the accepted norms and they cannot simply issue the certificate as demanded by the excise officials.
- m. The form attached to the present government order displays the details of the doctor who referred the patient to the excise official. Such an entry is unacceptable to the medical officers. They are not expected to refer a patient to the excise officials. Even if the reference means, a recommendation for a permit to buy IMFL, the same also cannot be accepted as IMFL is not a prescribed drug or medicine in the treatment of ADS.



- n. The possibility of the person with ADS having serious liver issues is very high. In the said event if a certificate as stated in the present government order is issued without a proper evaluation of the person, that may lead to complications and the medical officer could be sued for the consequences. A suit against the medical officer is legally maintainable as the government order says about the use of the certificate for the purchase of Alcohol. We as the association representing the medical officers cannot permit our members to be exposed to such complications and liabilities.
- o. It is also to be noted that the present government order does not cover the medical officers in the other branches falling under the AYUSH department, wherein even alcohol forms part of many medicines.
- p. The last but not the least impact would be the exposure of the medical staff to the epidemic through the present order. This is an eventuality which has to be avoided at any cost.

In the above stated circumstance we request your goodself to consider the whole issue in its true perspective and in the back drop of the various enactments governing the medical profession, sale of medicines and sale of liquor in the state without any delay and to relieve the medical officers of the state from acting against the norms and regulations governing their profession. It is made clear that till such time the association would be urging its members to desist from issuing any certificate as stated in the above referred government order.

Thanking you

Yours faithfully,

Dr Joseph Chacko
State President


Dr G S Vijayakrishnan
General Secretary



Copy to: -

1. The Hon'ble Chief minister of Kerala
2. The Hon'ble Minister for Health, Kerala
3. The Director of Health Services, Kerala