

# AMD

ASSOCIATION OF MD PHYSICIANS (AMD)

AMD/2020/SCMOHFW/1

06.10.2020

To,  
Dr. Harshvardhan  
Hon'ble Union Minister  
Ministry of Health and Family Welfare  
Government of India

**Subject:** Representation for Conversion of qualifying criteria from Percentage to Percentile for Screening Test for Foreign Medical Graduates.

**Ref.:** Order dated 30.09.2020 passed by the Hon'ble Supreme Court of India in Writ Petition (C) No.01051 of 2020 titled as Association of M.D. Physicians versus Union of India & Ors.

Hon'ble Sir,

1. The instant representation is being humbly submitted on behalf of thousands of Foreign Medical Graduates holding medical qualifications equivalent to MBBS from recognized medical colleges outside India, for your kind consideration of their request to apply the same yardstick of 'percentile' qualifying criteria, as is being applied for the NEET-UG and NEET-PG examinations, to the Screening Test prescribed for Foreign Medical Graduates.

2. That all of us foreign medical graduates are eligible to practice medicine in the respective countries from which we have obtained their graduate medical qualifications, however we are desirous of serving our own country and countrymen, especially in this dire time of COVID-19 pandemic which requires augmentation of not only the beds and infrastructure but also the strength of medical professionals who will be actually treating the patients.

3. That some foreign medical graduates have sent a representation to the then Medical Council of India (MCI) on 29.07.2020 praying for reduction in qualifying marks for FMGE/Screening Test with effect from the next scheduled test and which representation has been forwarded by the MCI to this Hon'ble Ministry vide letter No. MCI-203(1)(Gen.)/2020-Regn./11243 dated 30.07.2020. In response thereto this Hon'ble Ministry has written to the MCI and the National Board of Examinations (NBE- the body conducting examination) vide letter bearing No. V.11025/147/2020-MEP(FTS:8069971 dated 04.08.2020 seeking views and comments of MCI and NBE on the issue of reduction of qualifying marks in the Screening Test for foreign medical graduates.

4. It is learnt that both these authorities have replied to this Hon'ble Ministry that due to the fact that percentage qualifying criteria for passing the Screening Test has been approved by the Hon'ble Supreme Court vide its judgment passed in the case of **Sanjeev Gupta & Ors. v. Union of India & Anr.** [W.P.(C) No.604 of 2002 dated- 16.11.2004] reported as (2005) 1 SCC 45 (**copy enclosed**) and hence it can not be modified by the MCI or this Hon'ble Ministry.

5. That one association of Foreign Medical Graduates, viz. Foreign Medical Graduates Association, had submitted a representation dated 06.09.2020 before your honour seeking conversion of the percentage criteria to percentile criteria for FMGE/Screening Test being conducted for foreign medical graduates., which is still pending consideration of you honour.

6. That in view of the fact that the MCI and this Hon'ble Ministry was not able to take any decision on the representations of foreign medical graduates in view of the judgment of the Hon'ble Supreme Court in the case of **Sanjeev Gupta & Ors. v. Union of India & Anr.** (2005) 1 SCC 45; one association of the foreign medical graduates have approached the Hon'ble Supreme Court vide Writ Petition (Civil) No.01051 of 2020 titled as Association of M.D. Physicians versus Union of India & Ors. seeking the relief of application of percentile criteria, instead of percentage criteria, for qualifying the Screening Test as is being done for all other similar examinations such as NEET-UG and NEET-PG. (**Copy enclosed**)

7. That vide order dated 30.09.2020 the Hon'ble Supreme Court was pleased to permit the Foreign Medical Graduates to withdraw the said Writ petition (C) No.01051 of 2020 with liberty to make a representation in respect of the relief sought in the said writ petition. (**Copy enclosed**)

8. That therefore, the Hon'ble Supreme Court has required that this Hon'ble Ministry and the MCI (now National Medical Commission) to consider the request of the Foreign Medical Graduates for application of percentile criteria, instead of percentage criteria, for qualifying the Screening Test without being influenced by the judgment of **Sanjeev Gupta & Ors. v. Union of India & Anr.** (2005) 1 SCC 45.

9. That thus, after the order dated 30.09.2020 passed by a Bench of three Hon'ble Judges presided by the Hon'ble Chief Justice of India, the impediment of judgment of **Sanjeev Gupta & Ors. v. Union of India & Anr.** (2005) 1 SCC 45 in considering the request of the Foreign Medical Graduates for application of percentile criteria, instead of percentage criteria, for qualifying the Screening Test has been removed by the Hon'ble Supreme Court and this Hon'ble Ministry is now required to consider this representation of the Foreign Medical Graduates in accordance with the merits of their demand and the need of the hour.

10. In the above light, the humble submissions of the Foreign Medical

Graduates are as under:

a) The National Medical Commission Act, 2019, which has now repealed the Indian Medical Council Act, 1956 with effect from 25.09.2020 provides for a single "National Exit Test" by merging the existing NEET-PG examination for admission to Postgraduate Medical Courses and the 'Screening Test' under Section 15 of the National Medical Commission Act, 2019 which reads as under:

**"15. National Exit Test:**

(1) A common final year undergraduate medical examination, to be known as the National Exit Test shall be held for granting licence to practice medicine as medical practitioners and for enrolment in the State Register or the National Register, as the case may be.

(2) The **Commission shall conduct the National Exit Test** through such designated authority and in such manner as may be specified by regulations.

(3) The National Exit Test shall become operational on such date, within three years from the date of commencement of this Act, as may be appointed by the Central Government, by notification.

(4) **Any person with a foreign medical qualification shall have to qualify National Exit Test for the purpose of obtaining licence to practice medicine as medical practitioner and for enrolment in the State Register or the National Register, as the case may be,** in such manner as may be specified by regulations.

(5) The **National Exit Test shall be the basis for admission to the postgraduate broad-speciality medical education in medical institutions which are governed under the provisions of this Act** or under any other law for the time being in force and shall be done in such manner as may be specified by regulations.

(6) The Commission shall specify by regulations the manner of conducting common counselling by the designated authority for admission to the postgraduate broad-speciality seats in the medical institutions referred to in sub-section (5):

Provided that the designated authority of the Central Government shall conduct the common counselling for All India seats and the designated authority of the State Government shall conduct the common counselling for the seats at the State level."

b) That thus there will be a common exit test, both for Indian and Foreign Medical graduates and it would also form the basis for admission to PG Medical Courses for all candidates. Thus, the Parliament has already put the Indian and Foreign medical graduate at same

pedestal and has considered the NEET-PG and Screening Test as same level and as such the qualifying criteria for these similar examinations for similarly placed persons should also be the same, i.e. percentile basis and not percentage basis. It is unfathomable that now the National Exit test will be conducted through percentage based evaluation system which would be a retrograde step, and as such same yardstick is required to be applied to Screening test from the examination conducted on 31.08.2020.

c) Percentage based evaluation is 'examiner-based evaluation' judging a student on the standard of knowledge and experience of examiner which was found impractical. This system is also dependent upon the background of examiner and his own past education system. Whereas the Percentile evaluation is "peer-based evaluation" model was evolved and adopted as it was found more practical, fair and feasible to evaluate equally qualified persons supposed to have same standard of knowledge and experience as their peers. It is independent of the background of examiner and his own past education system and rationalise evaluation of persons coming from different backgrounds and education systems.

d) That prior to 2013, the Entrance Test for admission to Undergraduate, Postgraduate and Super-specialty courses in the country were based on percentage evaluation criteria, however considering the benefits and practicality of the percentile based evaluation system, MCI Regulations were amended to convert the percentage criteria to percentile criteria.

e) That because of the above rationality of percentile-based systems, it is being applied not only in the NEET-UG and NEET-PG and Super specialty examinations but also for IIT-JEE Advanced (Engineering), IIM-CAT (Management), NLU-CLAT (Law) etc. in India and internationally accepted examinations of SAT and GMAT etc. Even the ICSE and CBSE are now applying the CGPA system, instead of percentage-based evaluation for students of secondary and secondary school education system of the country.

f) That as such the reason as to why the same is not being applied to the Screening Test and the archaic practice of applying the percentage based qualifying criteria is being continued defies logic and fairness.

g) That further, Foreign Medical Graduates from Australia, Canada, New Zealand, UK and USA, who have also obtained PG from same country are exempted by MCI from qualifying Screening Test altogether amounting to discrimination.

h) That Section 13(4A) of the Indian Medical Council Act, 1956 under which the Screening Test Regulations, 2002 has been framed was equally applicable for all the foreign medical graduates and the Hon'ble Supreme Court in the judgment of **Yash Ahuja & Ors. v. Medical Council of India & Ors.** (2009) 10 SCC 313 has also held that the Screening Test under Section 13(4A) is for all foreign medical graduates.

i) That however, in its expert judgment, this Hon'ble Ministry was pleased to permit the students from the above countries to remain exempt from the 'Screening Test'. In similar vein the present pandemic situation demands huge number of qualified doctors in the country and thousands of qualified foreign medical graduates are hopelessly sitting at home seeing the country reeling from acute shortage of doctors, hence the introduction of percentile qualifying criteria will make at least 50% of these doctors eligible to assist their brethren in fighting with the pandemic on the front-lines.

j) That extraordinary times require extraordinary measures and hence the Government of India has permitted utilization of services of even final year MBBS students and Ayush practitioners in this pandemic situation, yet thousands of qualified doctors are being made to sit at home. Further, the percentile qualification criteria or NEET-PG has been reduced from 50th percentile to 30th percentile and persons securing marks as low as 23% in percentage value are being permitted to study Postgraduate course in medicine in the country.

k) The Screening test, as the name indicates is a mere screening test to be allowed to practice medicine in India and these doctors are already eligible to practice medicine in the respective countries from where they have obtained their degree. Therefore, insisting on 50% qualification marks even in such a situation where country needs more and more doctors for a mere screening examination is not advisable.

l) That the benefit of having percentile is also that larger pool of qualified persons as it would help in preparedness to fight COVID-19 pandemic in terms of Section 36(d) of Disaster Management Act, 2005.

m) That in view of the extraordinary circumstances of the global pandemic of COVID-19 and acute shortage of medical professionals in the country requiring to augment the health care facilities across the country, the services of eligible and trained medical professional who are foreign medical graduates are not being utilized by insisting on passing the Screening Test, which is test of all subjects taught over 6 years of the Course in 2 days and with 50% of total marks.

n) That even in normal circumstances, India lags behind the patient: doctor ratio prescribed by the World Health Organization and healthcare system of the country is in dismal state for the sole reason of lack of doctors.

o) That therefore, in recent years the policy change by the Government is visible in grant of more permission to medical colleges to increase seats in MBBS Courses in view of acute shortage of medical professionals in the country.

p) That similar treatment is required to be meted to the foreign medical graduates who are also Indian Citizens and they do not deserve such discriminatory treatment.

q) That even in the prevailing circumstance, where the country is reeling from lack of doctors and the petitioners are unable to prepare for the Screening Test, the Respondents paid no heed to redressal of grievance of the Petitioners qua the Screening Test conducted for Indian citizens who are foreign medical graduates.

r) That prior to 2001 all foreign medical graduates were required to complete one year of internship in a medical institution of India to obtain registration for practicing modern medicine in the country and Screening Test has been introduced only with effect from 2002 and has been applied prospectively thereafter.

s) That earlier also the nature, pattern and content of the Screening test has been decided in consultation with all concerned, including the foreign medical graduates in the year 2004 which is reflected in following paragraph of the judgment of the Hon'ble Supreme Court in the case of ***Sanjeev Gupta & Ors. v. Union of India & Anr.*** (2005) 1 SCC 45:

**"27.** Counsel for the parties were heard at length on the points raised in the writ petitions on 28-4-2002 and 29-4-2002. When the hearing of the case was nearing conclusion the **Bench put it across to the counsel for the parties** that if the Court forms an opinion that the students who are graduating from foreign universities and specially from the universities of the erstwhile USSR should undergo a screening test and practical training before being held entitled to permanent registration for medical practice in India then **what should be the nature, content and methodology of test and who should conduct it? Learned counsel for the respondents agreed to hold high-level consultation and come back with their suggestions.** Counsel for the petitioners stated that they would hand over to the counsel of the Union of India and MCI their suggestions within a week. The respondents were put at liberty to consult the National Board of Examinations and such other expert bodies as they deemed fit. The petitioners were permitted to nominate any two representatives of theirs who should be present at the time of hearing in the process of finalising the nature, content and methodology of the screening test proposed. The matter was adjourned to 12-7-2004.

**28.** The Union of India in compliance with the order dated 29-4-2004 filed an affidavit stating therein that the suggestions received by the petitioners were initially considered in a joint meeting called by the Union of India on 23-6-2004 under the Chairmanship of the Joint Secretary (Medical Education) in the Ministry of Health and

Family Welfare and attended by the members of the Sub-Committee constituted by MCI for this purpose and a representative from the National Board of Examinations, Delhi. In this meeting it was decided to afford personal hearing to two of the representatives of the petitioners in its next **meeting scheduled for 30-6-2004 to finalise the nature, content and methodology of the screening test.** In the meeting held on 30-6-2004 in addition to the representatives from MCI, the National Board of Examinations, two representatives from the Directorate General of Health Services were also associated to obtain their expert opinion in the matter. Representatives of the petitioners were heard by the Committee.

**46.** Suggestion of the petitioners that they should be allowed to join the internship by grant of provisional registration without qualifying the screening test whereby they can involve themselves in the patient care and management cannot be permitted in the larger public interest. Besides the above, this suggestion is contrary to Regulation 3 of the Screening Test Regulations, 2002 and to the observations in para 4 of the judgment in *Medical Council of India* [(2002) 3 SCC 696].

**50. The suggestion on behalf of the petitioners that only one paper instead of three with less weightage in the screening test be given to the pre-clinical and para-clinical subjects taught in the initial years of the medicine course has been accepted.** The suggestion that the extra internship be provided in lieu of the screening test and that the candidates be permitted to join the internship straightaway without qualifying the screening test cannot be accepted being contrary to the statutory regulations and against the public interest.

**51. Minutes of the meeting held on 30-6-2004 which have been approved by the Government of India and MCI are approved. In future the screening test would be conducted as per the guidelines laid down in the meeting held on 30-6-2004."**

t) That thus, this Hon'ble Ministry is requested to follow the precedent and consider the requests of the Foreign Medical Graduates for applying the same yardstick of 'percentile' qualifying criteria, as is being applied for the NEET-UG and NEET-PG examinations, to the Screening Test prescribed for Foreign Medical Graduates.

u) That another grievance of the Foreign Medical Graduates is that the National Board of Examinations (NBE) is not complying with the directions passed by the Hon'ble Supreme Court in the case of ***Sanjeev Gupta & Ors. v. Union of India & Anr.*** (2005) 1 SCC 45 that the Screening test is to be conducted in accordance with the decisions taken in the meeting dated 30.06.2004 and the pattern of questions as seen in the several previous examinations is not on the pattern approved by the Hon'ble Supreme Court in the said judgment and

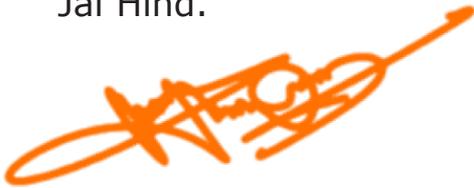
yet insistence of obtaining 50% marks in the screening test is being enforced without any rational behind it.

v) That in addition to the above, all other grounds and averments made in the Writ Petition (C) No.01051 of 2020 filed by the Association of M.D. Physicians before the Hon'ble Supreme Court, a copy of which is enclosed herewith, may please be considered as part and parcel of the present representation of the Foreign Medical Graduates.

11. That while considering the instant representation, your honour may please keep in mind the twin considerations of present dire need of qualified medical professionals in the country as well as the career and future of sons of soil of the country who have obtained foreign medical qualifications and eligible to practice in foreign countries but are yet inclined to serve their country and countrymen.

12. That in view of the above submissions, it is most humbly prayed from your honour to consider the request to apply the same yardstick of 'percentile' qualifying criteria, as is being applied for the NEET-UG and NEET-PG examinations, to the Screening Test prescribed for Foreign Medical Graduates sympathetically and positively. Also we are praying for the relief of applying the 'percentile' based assessment criteria for the Screening Test held on 31.08.2020 as well.

Jai Hind.



Yours Sincerely,

**DR. RAJESH RAJAN** MD Ph.D FRCP(Edin) FRCP (Glasg) FRCP(Ire) FACC FESC FAHA  
**PRESIDENT** - ASSOCIATION OF MD PHYSICIANS (AMD)

Enclosures:

- 1) Judgment of **Sanjeev Gupta & Ors. v. Union of India & Anr.** (2005) 1 SCC 45
- 2) Writ Petition (Civil) No.1051 of 2020 titled as *Association of M.D. Physicians & Anr. v. Union of India & Ors.* filed before the Hon'ble Supreme Court.
- 3) Order dated 30.09.2020 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.1051 of 2020

Copy to:

1. Chairman, National Medical Commission
2. President, National Board of Examination