The Health Professions Council of South Africa and the medical practitioner

Changes in the Health Professions Council of South Africa over the past decade.

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Changes as a result of the democratic dispensation in South Africa have inevitably had a profound impact on the regulation of health professions in the country. In 1995, as a consequence of the merger of the South African Medical and Dental Council (SAMDC) and the Transkei and Ciskei Medical Councils, the Interim National Medical and Dental Council of South Africa was established. After a 5-year transitional period the Health Professions Council of South Africa (HPCSA) was launched. Some of the initial challenges faced by the HPCSA were the following: dealing with problems arising from what appeared to be complicity of some health professionals with the apartheid system with the concomitant erosion of practitioner independence; failure of the SAMDC in certain instances to deal decisively or at all with health professionals who supported the apartheid system to the utter disregard of patient human rights and ethics; and in certain instances, failure by the SAMDC to provide guidelines and policy direction to health professionals in dual-loyalty positions.

This article looks at the approach of the HPCSA 11 years into a democratic dispensation, particularly in terms of its vision, mission statement, motto, structure and functioning. In addition, the ethical guidelines for clinical practice formulated by the Council and some examples of complaints to the Council are discussed.

STATUTORY MANDATE AND PURPOSE

The HPCSA is a statutory body established in terms of the Health Professions Act, 1974. Its mission, together with the twelve Professional Boards that operate under its jurisdiction, is to promote the health of all people in South Africa by determining standards of professional education and training and setting and maintaining the highest standards of professional and ethical behaviour for its registered health care professionals. It has, as its vision, quality health care standards for all. The values promulgated by the Council for its members are those of integrity, impartiality, efficiency, effectiveness, accountability, Batho Pele principles, decisiveness and respect and transformation. The HPCSA states that all health care professionals should at all times act in the best interests of the patient, with the patient's clinical needs being of paramount importance.

GUIDELINES, POLICIES, DUTIES AND RULES

The HPCSA has issued a set of guidelines and policies to assert practitioner independence and patients' rights. The spirit of these professional guidelines is founded on the relationship of trust that health care professionals have with their patients. Implicit in this is the requirement for a life-long commitment to good professional and ethical practice.

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Ethical guidelines express duties, which are basically obligations to do or refrain from doing things. In the health context duties bind health professionals to their patients who, in turn, have corresponding rights or claims against their health care professionals. As professionals, these duties or moral obligations are acquired by being qualified and licensed as professionals, i.e. entering into contractual relations with their patients. Some examples include professional duties to provide medical care, relieve pain, gain informed consent, respect confidentiality and be truthful. In addition, HPCSA guidelines include the need to respect colleagues and other professionals.

Moreover, Rule 26 of the Council's Ethical and Professional Rules imposes a duty on health professionals to report impairment in fellow students, interns, practitioners or self to the relevant Board. Impaired, as defined by the Act, means 'a mental or physical condition, or the abuse of or dependence on chemical substances, which affects the competence, attitude, judgment or performance of a student or a person registered in terms of this Act'.

Table II. **Details of 176 finalised matters**

Description	2002 (12 mo.)	2003/2004 (15 mo.)	2004/2005 (12 mo.)
Fines (including admission of guilt)	29	135	79
Cases withdrawn	6	17	33
Acquitted	6	16	37
Suspensions	29	26	16
Erasures	1	2	4
Caution and reprimand	8	11	7
Total	**103 (8.5 mo.)**	**229 (15 mo.)**	**176 (15 mo.)**
Total amount received in fines	R211 752	R1 520 582	R1 430 752

COMPLAINTS

Dealing with complaints

All complaints are directed in writing to the Registrar, who, within 7 days, forwards the complaint to the health professional concerned with a request for a written explanation. In exceptional circumstances, the HPCSA could suspend a practitioner who poses an imminent threat to the public, pending a formal enquiry. The letter of complaint, together with the health care professional's explanation, is referred to the Committee of Preliminary Enquiry. In a *prima facie* case of unprofessional conduct, the preliminary committees will refer the matter to the Professional Conduct Committee for a professional conduct enquiry, during which oral evidence is presented. Often, the services of expert independent witnesses are utilised. These enquiries are open to the public and the media unless closed at the discretion of the Professional Conduct Committee. This Committee's decision is final unless either party lodges an appeal.

Where a finding of professional misconduct is reached, the following penalties may be imposed:

- a caution, reprimand or both
- a fine
- suspension for a specified period from practising her/his profession
- struck off the roll
- a compulsory period of professional service, or
- payment of the costs of the proceedings or restitution.

Consumer awareness of Council's grievance procedures

There has been a remarkable increase in consumers' awareness of Council's grievance procedures and their ability to exercise their rights. In addition, consumers of health care services have also become more aware of their civil rights. During the 2004/2005 financial year a total of 1 191 complaints were received – an average of about 100 complaints per month compared with 89 per month during the previous financial year (Table I). During this period, 89 matters were referred to the SAPS for further or additional action.

Table I. **Complaints received compared with previous financial years**

2001	Increase 2001 - 2002	2002	Increase 2002 - 2003/04	2003/04	Increase year on year	2004/05 (12-month period)
943 (av.78/mo.)	12%	1 054 (av.88/mo.)	27%	1 341 (av.89/mo.)	12%	1 191 (av.99/mo.)

An appraisal of the specific issues resulting in consumers being exposed to unprofessional conduct reveals clearly that the majority of cases concern 'criminal/dishonesty' (43%).

It is evident that the HPCSA approach to matters of public protection, which serves as its primary mandate, has significantly changed towards asserting practitioner independence and accountability.

During the past year, 4 of the cases referred for professional conduct enquiries resulted in findings of gross unprofessional conduct, with health care practitioners being struck off the register. The charges ranged from employing unregistered personnel, indecent assault, sexual assault of a patient to incompetence. There were twice as many erasures from the register in the past year than in the 2003/2004 financial year (Table II).

A number of other matters, which have not yet been finalised, have also been covered extensively in the media. Currently, the legal team is investigating 26 matters against one practitioner and 61 matters against another.

Between 1 April 2004 and 31 March 2005, the Council's legal team finalised a total of 176 matters at enquiry level, 85 at preliminary enquiry level and 91 by means of admission of guilt fines. A total of 462 matters (39% of the 1 191 complaints lodged) were referred for professional conduct enquiries. At the end of March 2005, there were 295 matters pending at enquiry and preliminary levels.

An appraisal of the specific issues resulting in consumers being exposed to unprofessional conduct reveals clearly that the majority of cases concern 'criminal/dishonesty' (43%). Of the 304 complaints investigated by the HPCSA between April 2004 and March 2005, 234 (77%) had guilty verdicts. In the poor treatment category, 67 cases were of substandard or inadequate treatment and 6 concerned problems with informed consent and confidentiality. There were 98 cases of fraud, 30 of fraudulently issuing certificates and 68 of fraudulent charging practice.

Some recent cases

Professional negligence

A case involving gross professional negligence resulting in an erasure (and in civil litigation) was covered extensively in the media in 2004. The practitioner was accused of performing spinal and back operations that were unnecessary and/or carried out poorly or below the acceptable standards and of failing to provide appropriate postoperative management for the patients. Eight charges had been brought against him. The Professional Conduct Enquiry Committee, in passing sentence in July 2004, found the practitioner guilty of unprofessional conduct in that the standard of his practice fell short of what could reasonably be expected from a careful orthopaedic surgeon. Accordingly, he was struck off the roll.

Unprofessional conduct/perverse incentives

In another recently publicised case radiologists in a group practice pleaded guilty to charges of overcharging and overbilling patients, as well as paying kickbacks to referring doctors. Three of the radiologists tendered a guilty plea to unprofessional conduct arising from the fact that some of their patients or their medical aids were incorrectly billed. They also tendered a guilty plea to failing to ensure that proper accounting procedures were implemented, thereby allowing for inaccuracies in accounts rendered to patients or their medical schemes. Three of them also pleaded guilty to a charge of unprofessional conduct and admitted to having paid kickbacks to 4 doctors, who had taken no part in the radiological service rendered to their patients, over a period of 5 years. One of the team tendered a guilty plea to a charge of unprofessional conduct for failure to establish and take sufficient steps to ensure that accounts rendered to patients and their medical aids were accurate. This failure resulted in patients and their medical aids being overbilled and overcharged by the partnership for radiological services.

The Professional Conduct Enquiry Committee suspended the 4 radiologists in question for between 3 and 18 months and imposed fines of between R50 000 and R150 000.

Fraudulent issuing of medical certificates

In 2004, a television programme exposed doctors who were issuing fraudulent medical certificates. One doctor was charged as a result of this programme and was effectively suspended from the register for a period of 3 months. A further 9 months' suspension was conditionally suspended for 5 years. In addition, a fine of R10 000 was imposed. The second doctor, who was not registered at the time of the programme, was found guilty of practising without being registered, practising outside the scope of his (eventual) registration and issuing unacceptable medical certificates.

Human rights violations

A doctor was charged with unprofessional conduct when he was found to be negligent in the conduct of his practice by stating that a man had been killed in a car accident when in fact the man had died as a result of a gunshot wound during political violence in KwaZulu-Natal. As the then District Surgeon, he either did not conduct a proper postmortem or he covered up the real cause of death. The doctor was found guilty only of negligence because intentional or fraudulent concealment of the true cause of death could not be established.

Failure to inform patients of results of diagnostic tests

A doctor was accused of conducting an HIV test without proper pre- and post-test counselling. The preliminary committee did not find any *prima facie* evidence of wrongdoing against the doctor. However, the AIDS Law Project

took the HPCSA to the High Court who ordered them to open an enquiry. The doctor was found guilty of failing to inform the patient of the outcome of the HIV test and suspended from practice for 3 months, wholly suspended for 3 years on condition that he did not make himself guilty of a similar offence.

CONCLUSION

It is evident that the HPCSA approach to matters of public protection, which serves as its primary mandate, has significantly changed towards asserting practitioner independence and accountability. The complaints and policy guidance systems are clearly reflective of its robust and transparent approach, which is comparable to the world's best regulatory systems in the health sector.

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Bibliography available on request.

IN A NUTSHELL

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The HPCSA has issued a set of guidelines and policies to assert practitioner independence and patients' rights.

Ethical duties bind health professionals to their patients who, in turn, have corresponding rights or claims against their health care professionals.

There has been a remarkable increase in consumers' awareness of Council's grievance procedures and their ability to exercise their rights. In addition, consumers of health care services have also become more aware of their civil rights.

Forty-three per cent of the findings of unprofessional conduct have been in the 'criminal/dishonesty' category.

The HPCSA imposes a duty on health professionals to report impairment in fellow students, interns, practitioners, or self to the relevant board.

Failure to inform patients of results of diagnostic tests may result in the health professional being suspended from practice.

A finding of professional misconduct can lead to a caution, reprimand or both; a fine; suspension for a specified period from practising her/his profession; being struck off the roll; a compulsory period of professional service; payment of the costs of the proceedings or restitution.