



COURTS SHARPEN UP THE HPCSA

The Health Professions Council of South Africa (HPCSA) is fast-tracking probes into complaints against doctors in all AIDS-related cases following the death of at least two complainants and two humiliating defeats in the Pretoria High Court.

High Court appeals by the AIDS Law Project (ALP) on behalf of patients led to the reconvening of two professional conduct inquiries, one of which rescinded its acquittal of a Louis Trichardt doctor and conditionally suspended him for 6 months.

In a subsequent application to review the decision not to institute an enquiry into the conduct of Nelspruit doctor Abraham Hendrik Barnard (for allegedly refusing to treat an HIV-positive patient), the HPCSA withdrew its opposition, agreeing to abide by the court's ruling, handed down on 14 July. The High Court ordered the HPCSA to also reconvene a full professional conduct hearing, now scheduled for later this month.

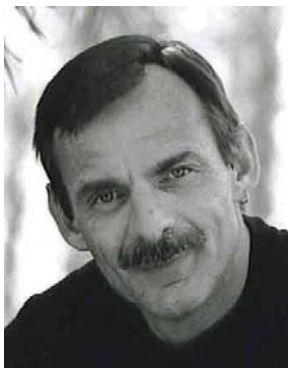
Far-reaching implications

Both cases have far-reaching implications for doctors failing to adhere to the HIV / AIDS treatment guidelines because they will almost certainly result in more efficient and faster HPCSA probes and better witness and evidence acquisition.

AIDS Law Project lead advocate, Liesl Gerntholtz, said two of her clients died while waiting for the HPCSA to resolve their complaints while conflict with the HPCSA over 'inadequate patient protection' had been going on for more than 5 years.

Just days before the High Court decision on the Barnard case, Advocate

Boyce Mkhize, the registrar of the HPCSA, announced the fast-tracking of HIV / AIDS-related cases and urged health care practitioners to follow the council's treatment guidelines.



Mr David Patient, who is HIV-positive, was allegedly refused treatment by a Nelspruit doctor.

He stressed that 'these guidelines form the ethical basis of any disciplinary action we might take against a health care practitioner should a patient report unprofessional conduct to us'.

Public complaints against doctors range from breach of confidentiality and failure to provide HIV test counselling, to failure to treat patients due to their HIV status.

Some HPCSA disciplinary hearings have had to be cancelled because complainants died without testifying, but even the ALP agrees that the overall backlog of cases is finally clearing and that this aspect is no longer causing problems.

The council says it is giving all HIV / AIDS cases 'special attention' because of the 'sensitivity and seriousness of the issues'.

Inadequate patient protection

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The battle played out in the media with the ALP taking a 'stubborn' HPCSA to the Public Protector and the Human Rights Commission -- with limited success.

However the two latest ALP court victories seem to have spurred the HPCSA into action.

Gerntholtz said she was 'cautiously optimistic that there may now be a stronger commitment to act as an agent for patients or to be more procedurally fair – our experience is that the preliminary committee of enquiry was a problem'. She added: 'We've finally got to where we can say that we're comfortable taking patient complaints to the HPCSA because we believe they'll be resolved'.

Watershed cases

The two watershed cases involved the following:

The HPCSA's Committee of Preliminary Enquiry 'acquitted' Louis Trichardt's Dr Elardus Labuschagne of improper and disgraceful conduct in treating a pregnant woman 3 years ago and recommended that no further action be taken against him.

However, following an ALP High Court intervention, a full professional conduct enquiry was convened a year



ago, finding Labuschagne guilty of failing to inform the woman of the results of her HIV test results (her HIV-positive child was stillborn).

The complaint involved his treatment and monitoring of the woman from when she came to see him 6 months into her pregnancy.

The appeal centred on whether Labuschagne had informed the woman that her blood would be tested for HIV (she had queried an item for 'HIV Elisa' on her account and he testified to having 'sidestepped the question' by saying it indicated an infection 'of which AIDS might be a result').

On the allegation that he failed to inform her of her test results in good time, Labuschagne argued that it would have been 'heartless and cruel' to inform a woman pregnant with her first child 1 month before its birth that she was HIV-positive and that such information would 'not have changed anything'.

The appeal court ruled that, according to the HIV/AIDS treatment guidelines, it could not have been proper for Labuschagne to test the blood without informing the woman of the purpose of the test. By accepting Labuschagne's version and rejecting hers, the Committee of Preliminary Enquiry had 'misconceived its powers and overstepped the boundaries of its discretion'.

A full HPCSA Professional Conduct Inquiry subsequently found Labuschagne had failed to inform the woman of her HIV test results and suspended him from practising for 6 months, suspending this sentence for 3 years.

In the subsequent case of Mr David Patient, an HIV-positive long-term 'non-progressor', the HPCSA suddenly withdrew its opposition to the ALP

High Court appeal and said it would abide by the outcome.

'Refused' to treat

Mr Patient claimed that in spite of informing Dr Abraham Hendrik Barnard's receptionist that he was HIV-positive before arriving for an appointment, she was not called as a witness to his complaint that Barnard subsequently refused to treat him.



Advocate Boyce Mkhize, CEO of the Health Professions Council of South Africa.

A preliminary committee hearing originally accepted Barnard's denial of an allegedly fierce altercation with Patient in his rooms and said the evidence from both parties was 'mutually destructive'.

However the Pretoria High Court set aside the HPCSA preliminary enquiry decision that there was no evidence to hold an enquiry into Barnard's conduct, set aside the HPCSA adoption of this decision and ordered the HPCSA to

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refer Barnard's conduct to a disciplinary committee.

The courts ordered the HPCSA to pay costs in both matters. The HIV-positive woman who lost her baby is suing Labuschagne for R250 000 in a separate civil case that is still pending.

Mkhize said the two cases were a minority of those referred to full professional conduct hearings which had imposed a wide variety of sanctions on doctors.

Backlog down

He said that the HPCSA now had only 191 disciplinary cases outstanding. 'I'm confident that by March next year we'll have completed three-quarters of them. We're already setting down hearing dates for complaints received in 2004 and this means we're working within our target of finalising all complaints within 18 months.'

In the last financial year four doctors were struck off the roll, 16 were suspended and seven cautioned or reprimanded. A total of 37 were acquitted and 33 cases were withdrawn.

The HPCSA, which has 105 000 health professionals registered with it, received 1 191 complaints over the last financial last year.

Chris Bateman