



COVER YOU, COVER ME

By early next year all health care practitioners will have to provide the Health Professions Council of South Africa (HPCSA) with proof of mandatory indemnity cover.

This is the outcome of concern first expressed by the Professional Board of Psychology (PBPSA) to the HPCSA several years ago.

Confirming that he was a prime motivator for regulations that are now part of the National Health Act, Professor Saths Cooper, immediate past-chairman of PBPSA, said concern was mainly for patients who sued practitioners not indemnified or insured.

At present lawyers may not practise without fidelity cover, yet health care professionals may (albeit unwisely in the increasingly litigious climate) – until the regulations kick in early next year.

These patients, after suffering ‘emotional, physical and/or financial harm’, found they could not be paid out because the doctor was unable to afford the damages awarded.

‘Patients are dealing with people who have the power to make life and death decisions about them, yet not all of them are covered or insured,’ Cooper explained.

He said that ‘besides turning to a priest or God’, people next turned to a lawyer or health care professional when it came to matters of life and death.

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Systems favours the rich

Added Cooper: ‘Our legal system is totally for the very wealthy and there’s evidence that when a practitioner sees complaints coming they sometimes quietly de-register from their professional board’.

He claimed to have seen psychologists do this and said this left the complainant with little chance of financial compensation as the HPCSA could then ‘not touch them’.



Professor Saths Cooper, immediate past president of the Professional Board of Psychologists of South Africa.

Pursuing private legal suits is prohibitively expensive.

However, HPCSA spokesperson, Anina Steele, said that immediately a complaint was registered with the HPCSA, their electronic system made it ‘impossible to execute a request for voluntary erasure’.

This was based on the common law principle that jurisdiction of a person registered remain in force for as long as any outstanding issues which arose during the period of registration.

Avoiding the storm

If properly maintained, this system

would make Cooper’s claim possible only if a health care practitioner deregistered when he saw ‘storm clouds gathering’ – before a complaint was officially laid.

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He said complainants often backed down when they realised that the health care professional had taken legal and collegial advice, ‘and that’s the end of the matter’.

One irony was that historically complainants to the PBPSA had come from mainly white privileged people, ‘in other words your typical platteland Afrikaner’.

Hired guns

Asked to give an example of the kind of case that first aroused concern in the PBPSA, Cooper cited child custody battles where a psychologist was asked to assess a child.

‘They don’t take a full history, hand in a single uncorroborated report where there’s just a hint of sexual molestation that impugns the father and the father is then denied custody or has his visitation rights curtailed,’ he said.

This kind of ‘legal manipulation’ was untenable and people needed to be able to seek recourse and/or redress.



'Indemnity cover, by its very nature, is not intended for sunny days but for when it really pours and heaven forbid that this happens, but the cover should be there,' he added.

Confidentiality compromised

Psychologists themselves were vulnerable in matters of confidentiality (no protection in law) – mostly when a former patient committed a crime a decade or more after being in therapy.

While lawyers were accorded client confidentiality privilege, priests, journalists and psychologists were not.

'The lawyers' argument is that their clients won't trust them if they break confidence but what about a patient who needs recovery? – this leaves a psychologist totally naked,' he said.

Cooper, who is currently the vice-president of the International Union of

Psychological Science, hit out at psychologists with 'backyard' part-time practices, saying it undermined professionalism and contributed to the problem of uninsured professionals unwilling to pay subscriptions and unable to face legal claims.

'In my view either you do something properly or not at all,' he added.

HPCSA CEO, Advocate Boyce Mkhize, said the new requirement would help his council better fulfil its mandate to protect the public.

'We don't want patients losing quality of life and the right to earn a living just because some clinical intervention is wrong,' he said.

Unknown numbers

Attempts by *Izindaba* to quantify the numbers of doctors currently not indemnified proved impossible owing

to factors confounding comparisons between Medical Protection Society (MPS) membership and HPCSA-registered health practitioners.

These include state hospital indemnity, limited private practice and practitioners working and living overseas but still registered locally.

The indemnity cover (meaning insurance provided by recognised providers in terms of the relevant insurance act or professional indemnity provided through membership of a recognised medical protection organisation) must be maintained at all times.

Health care professionals will have to provide their board with documentary proof and details of cover on an annual basis.

Chris Bateman

OVATIONS AMID THE 'TRANSFORMATION BLUES'

Six doctors and key players in the transformation of the South African Medical Association into a progressive, socially relevant organisation were honoured at a presidential banquet after SAMA's annual general meeting (AGM) in Pretoria in July.

Announcing the names, outgoing SAMA president, Professor John Terblanche, warned the AGM that the transformation process was still underway with many doctors still outside the fold.

'To be truly influential we must persuade the majority of doctors to join and be members – I'm sure that will be a priority for our new Secretary General, Dr Aquina Thulare,' he added.

Outlining the dramatic key events in the racial unification of the (predominantly white) old MASA, the Progressive Doctors Group (PDG) and the National Medical Alliance (NMA),

Terblanche said the six made 'seminal contributions in vital areas'.

Citations

The six are Drs Hendrik Hanekom, Bernard Mandell, Zolile Mlisana, Percy Mahlathi, Lasie Mogudi (SAMA's new President), and Mohamed Adam.

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SAMA's transformation in the mere 5 years since I joined *SAMJ's Izindaba* has produced high drama, including personality fall-outs, resignations, court threats, a board collapse, racial intrigue and a high-profile forensic audit.

They have resulted in a tightening up of reporting structures and procedures, staff streamlining and improved liaison between SAMA's operational and executive teams – all intended to benefit doctors country-wide.

Unification history

Terblanche singled out three dates in the painful overall transformation as 'crucial milestones'.

- 20 September 1997 – the signing of the 'Agreement of Understanding' after years of negotiations between MASA and 6 other doctor groupings.

On the MASA side, chairman of MASA's federal council, Bernard