



## Kickbacks in relation to medical practice

**To the Editor:** I am one of the doctors charged in the kickbacks case reported on by Chris Bateman.<sup>1</sup> I don't think the report should go unchallenged and unanswered, since it is an in-depth article and, as far as I know, the third article on this subject to appear in the *SAMJ* since the problem started.

As far as I know the *SAMJ* report was prepared second hand from reports in the *Star* newspaper since the reporter, Chris Bateman, was not at the Health Professions Council hearing. The report seems to be a carbon copy of the unobjective, biased report by the *Star's* news reporter that day.

I think the report should therefore be corrected as rapidly as possible as follows:

1. The bookkeeper gave evidence in chief for approximately 1 hour and was cross-examined for 2 hours (which cross-examination is to recommence on 31 March 2003).

During cross-examination many points favourable to our case were discussed and brought out by the Counsel acting for us and were admitted to by the bookkeeper. For some reason, this was not reported by the *Star* newspaper reporter, which is disquieting, and of course, the lack of factual reports on our side of the case and what transpired on the first day of hearings, is now perpetuated by the report in the *SAMJ*, which makes no mention of these facts either.

Therefore, while I am not against the reporting of Medical Council hearings to the public or to the profession, if the problem is going to be reported it should be reported accurately and fairly.

2. During her evidence the bookkeeper admitted that to a certain extent she had given selective information to the investigators and the Council and also admitted that she had 'misled' the Council (this record and a transcript of the first day's evidence is available and can presumably be obtained from the Council).

Other doctors' names appeared during the investigation; therefore, how and why they are not charged, how and why they are not with us in this enquiry, so to speak, is something that has to be satisfactorily explained by the Council and the investigators acting for the Council, and should also have been reported on since it may be relevant to the whole tone, nature and aim of the proceedings. It is not known why there was or is selective charging of the five doctors concerned.

High Court papers are currently being drawn by our Counsel reviewing the conduct of the legal assessors and the committee during the inquiry.

A more correct background needs to be given with regard to the question of postponement of the inquiry and the question of indemnity. The Council has offered us indemnity in return for our co-operation in the case, and a strong point needs to be made, viz. that the Council withdrew indemnity because it did

not like the answers we gave.

The question of co-operation, the question of validity of the ethics of offering indemnity and then withdrawing indemnity if one does not like the answer that is given, needs to be examined seriously, and this is what is happening before the High Court of South Africa.

Finally, I am aware that this article may be mistimed and that it discusses, to a certain extent, the merits of a case under inquiry, but the articles in the *SAMJ*, particularly the last one, are prejudicial to us, particularly if the right story or our side does not get across.

We need accurate and factual reporting of what went on during that first day of cross examination.

The *SAMJ* article was unhelpful to us as targets, hence the need for this reply. Many doctors have been struck off the Medical Roll over the last 1 - 2 years and are not mentioned in any reports, whereas this problem, dispute, and inquiry has been mentioned three times. We don't like the suggestion of any sort of vendetta, or political message, and consequently you should examine the *SAMJ's* role in all of this.

The Editor of the *SAMJ*, in all fairness, could have asked us for our statement on the matter. This is our peer body and we might expect common decency from it, not one-sided reporting. Even though we expect to be found not guilty in relation to this case, we have been subjected to damaging publicity which has impacted to a certain extent on our practices and social interaction with our colleagues. The *Star* chose to print only facts that are sensational, but for our peer body to do the same, knowing quite well what the negative impact would be, is in bad taste.

I suggest that the *SAMJ* attend the inquiry on the 31 March 2003, to ascertain the true facts of the matter.

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1. Bateman C. Illes secretary covered 'kickback' tracks (Izindaba). *S Afr Med J* 2002; 92: 677-678.

**To the Editor:** I note with some disappointment the recent article on kickbacks by Chris Bateman in the *SAMJ*.<sup>1</sup> This article represents an almost verbatim reproduction of a very one-sided and biased article which appeared recently in the *Star* newspaper. In Bateman's article, no attempt was made to interview the practitioners involved, nor was any comment made on the content of the cross-examination (day 3 of the hearing). One would have hoped that the official mouthpiece of the South African Medical Association, an organisation presumably representing the best interests of all its members, would have been more balanced in its reporting.

A significant number of practitioners countrywide are currently being investigated for receiving kickbacks. They will,



in the near future, face disciplinary hearings convened by the HPCSA, and in several cases this may well result in the disruption of practices of individuals who are in fact committed to honest and ethical practice.

It is therefore with great concern that I note that the issue of receiving kickbacks has not been comprehensively debated. The HPCSA has launched into wholesale investigation of individuals who it has alleged have received kickbacks, which is immediately equated with a practice tainted by 'perverse incentives'. This assumption is fundamentally flawed, if for one reason alone — practitioners may receive remuneration from a source which provides a service to their patients without this influencing their practice profile (the manner in which they actually practise). Clearly the misdemeanour lies with the remuneration becoming a perverse incentive with regard to the modus of practice rather than receiving the payment *per se*.

As regard the issue of perverse incentives, many situations exist across the spectrum of practice which may incorporate this temptation. These include use of owned or co-owned apparatus for special investigations, the own supply of various surgical implants, as well as the basic dispensing of own drug stocks. Yet we trust in the integrity of the practitioner not to be tempted by the perverse incentive to over-service for monetary gain. The same rationale should be applied to individuals who have received payment from a practice/institution servicing their patients — the misdemeanor is in the practice profile being influenced perversely by the incentive rather than receiving the payment *per se*.

The evaluation of whether a practice profile has been influenced by perverse incentives can only be performed by the representative body of a given specialty/group in the form of peer review. Only then can evidence be led relating to possible professional misconduct.

I believe that further debate is urgently required in respect of this issue. It is imperative that SAMA, as the representative body of the profession as well as the individual specialist/group representative societies, engage the HPCSA on this matter. Once comprehensively discussed, specific guidelines should be formulated which would apply across the full spectrum of practice as discussed above, with clear definition regarding remuneration on the one hand and perverse incentivised profiles on the other.

With regard to my personal situation I maintain innocence in respect of all allegations made and reserve my rights.

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1. Bateman C. Illes secretary covered 'kickback' tracks (Izindaba). *S Afr Med J* 2002; 92: 677-678.

## Cannabis use in South Africa

**To the Editor:** In response to my initial article<sup>1</sup> on the subject, Pretorius and Naude<sup>2</sup> imply that I: (i) do not view cannabis as harmful; and (ii) support the legalisation of cannabis. On the contrary, as indicated in my article,<sup>1</sup> I see cannabis as being associated in some users with several adverse health consequences, including respiratory disease, adverse effects on adolescent development, cognitive impairment, exacerbation of psychosis, and psychomotor impairment — many of the effects they have highlighted in their letter. However, I have sought to list those with the strongest empirical support rather than adverse effects that might be confounded by other causal factors. Far from calling for the legalisation of cannabis, I called for decriminalisation of cannabis use (instituting civil rather than criminal penalties for cannabis possession). Legalisation is an entirely different thing! Decriminalising cannabis possession could potentially free up hundreds of thousands of rands spent per day on law enforcement and criminal justice processing of users of cannabis (not dealers). This could more profitably be used to fund a public health response preventing cannabis use among children and adolescents, and focusing on cannabis users at high risk for harm or having patterns of use that are harmful.

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1. Parry CDH. Critical issues in the debate on decriminalisation or legalisation of cannabis in South Africa (Forum). *S Afr Med J* 2002; 92: 697-698.
2. Pretorius E, Naudé H. Cannabis use in South Africa (Briewe). *S Afr Med J* 2002; 92: 927-928

## Child rape

**To the Editor:** The reaction of Professor Davies<sup>1</sup> to our report on child rape<sup>2</sup> airs an atmosphere of despair.

Since we live in a country where the majority of hospital admissions are trauma-related, we feel strongly that the medical profession also has a major role to play in the prevention of trauma. However, before we are able to change anything, we will have to know exactly what is happening in our society and report this accurately. Child sexual abuse is a very sensitive issue and bound to evoke strong personal emotions. Several reports have been quoted indicating that (at least) one in four females have been sexually abused before the age of 18 years. This is a clear indication that awful things do happen in our environment. Without awareness of what is happening, changes are unlikely to occur and the situation is unlikely to improve.

Based on our research we have made presentations to the Parliamentary Task Team on Sexual Abuse against Children.

