



PMTCT COURT ORDER: MANANA IN CONTEMPT?



The Treatment Action Campaign (TAC) has tackled maverick Mpumalanga MEC Sibongile Manana head-on in court, accusing her of obstructing the provision of nevirapine in direct defiance of last year's Constitutional Court order.

If she does not satisfactorily respond to a probing series of 'discovery questions' from TAC lawyers, they will apply to have her held in contempt of the Constitutional Court.

In a recent flurry of correspondence between TAC lawyers and Mpumalanga health officials, it has emerged that only two pilot site hospitals, Evander and Shongwe, were providing nevirapine and supporting 13 surrounding clinics - five months after the Constitutional Court order.

On Mpumalanga Province's own admission, voluntary counselling and testing (VCT) exists at 75 venues outside of these 'pilot' sites.

The Constitutional Court order specifically extended prevention of mother-to-child transmission (PMTCT) nevirapine coverage to anywhere VCT capacity existed 'whenever a doctor in consultation with his medical superintendent believes it to be medically indicated'.

Manana, known for her dissident views on HIV/AIDS and with a string of confrontations with AIDS groupings under her belt, most notably the Greater Nelspruit Rape Intervention Group (GRIP), is cited as the first respondent in the court action. The second respondent is the Minister Tshabalala-Msimang, whose job it is to ensure that provinces carry out their constitutional duties.

'Only two pilot site hospitals and 13 surrounding clinics are providing nevirapine five months after the Constitutional Court order'.

Papers so far submitted to the court reveal that on 27 August 2002 the TAC informed Manana in a meeting that they had arranged for supplies of nevirapine to be made available to doctors at Philadelphia Hospital for prescription.

Manana responded that the doctors were 'lucky' that they had not been prosecuted under the Public Finance Management Act for not reporting that they had 'received a donation'.

Citing a September 2002 *Mail & Guardian* newspaper report, the court application also quotes Manana's

spokesman, Dumisani Mlangeni, as 'condemning the doctors' growing rebellion' and warning that the province would be 'forced to charge anyone found dispensing nevirapine on hospital premises'.

The SAMJ recently learned that Mpumalanga's PMTCT programme has 'suddenly gathered speed' since the TAC legal letters began arriving in January.

According to TAC lawyer Geoff Budlender, the court application will ask that Manana be compelled to specify under oath what she has done to comply with the Constitutional Court roll-out order and timeframes for her future plans.

He said that once she had done that, 'the TAC reserves the right to come back to court to apply for an order declaring her to be in contempt of the Constitutional Court order'.

The Court ruled in August last year that PMTCT be rolled out after an appeal by the national government against an identical order by Pretoria High Court Judge Chris Botha.

Last year Manana sent out a circular to all heads of departments instructing them to send all reports concerning HIV/AIDS directly to her.

The TAC claims that another provincial directive that hospitals continue to obtain 'approval' before



Zweli Mkhize



making nevirapine available was directly in breach of the court order.

Far from facilitating the provision of nevirapine, Manana and her officials 'had attempted to prevent and obstruct its provision and pressurised doctors who provided it without her permission.'

Budlender told the SAMJ that he expected a court date to be set down for late February or early March.

'Right now the purpose is to get her version on the record - we've said that she can't plead ignorance because of the circulars she sent out,' he added.

TAC Chairperson Zackie Achmat said his organisation had corresponded extensively since July with Director-general Ayanda Ntsaluba, in a countrywide assessment of the roll-out and that he had 'co-operated fully'.

'We found the Western Cape, KwaZulu-Natal, Gauteng and North

West to be committed to the success of PMTCT.' Mpumalanga however, had followed a 'diametrically opposite path' Achmat said.

He added that 'it has misrepresented the extent of its actions, refused to respond to correspondence and delayed the implementation of PMTCT.'

Chris Bateman



Sibongile Manana

SAMA LOSES SAHRC DISCLOSURE COMPLAINT

SAMA has lost its complaint with the SA Human Rights Commission (SAHRC) on the disclosure of financial information that was lodged in May last year. The complaint concerned the violation of privacy rights of doctors in the senior management echelons of the Department of Public Service and Administration (DPSA), resulting in them having to disclose a wide range of personal and financial information.

The SAHRC did find a *prima facie* violation of the right to privacy, but found that such violation was justifiable in the light of the circumstances put forward by the DPSA. The DPSA argued that although many doctors do

not have actual decision-making powers that could pose conflicts of interest, they may influence such decisions.

The Commission also found that since some of the information (e.g. title deeds and shareholder information) could be accessed publicly, it is not considered private.

'SAMA urges doctors to remain vigilant as to whom they provide information, to demand absolute privacy and confidentiality and to only allow that information to be passed on to the Public Service Commission (PSC). No third party may access or distribute or keep that information on file,' said Elsabé Klinck of SAMA's Human

Rights, Law and Ethics Unit. It is recommended that doctors write "Personal Information - Not for disclosure to any person or body except the PSC" on each and every page that they fill out.'

SAMA advised doctors to report abuse, misuse or negligent handling of their information to their Human Rights, Law and Ethics Unit who will report the incident to the PSC.

Reports can be sent to Elsabé Klinck at elsabek@samedical.org, or fax to (012) 481 2100.

Magda Naudé

