



## LEGAL BONE THROWING HAS DOCTORS HOPPING MAD

Western medical practitioners are hopping mad at the looming prospect of traditional healers and pharmacists, among other health care workers, being legally empowered to diagnose and treat patients and even write sick notes.

The legal bones were thrown in the form of a government gazette of 10 October this year that signalled Health Minister Manto Tshabalala-Msimang's intent to introduce the Traditional Health Practitioners' Bill before the end of the year.

***While most doctors welcomed the regulation of traditional healers, they were angry and deeply suspicious of the effect of the legislation and vowed to fight it.***

Similar legislation will flay open the formerly exclusive preserve of doctors to nurses, pharmacists and other non-medical health professionals.

The 'Sangoma Bill', as some doctors call it, will establish an Interim Traditional Health Practitioners' Council, the registration of traditional health practitioners, fees they may charge, restrictions on unregistered practitioners, disciplinary inquiries and investigations by the council.

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Chairman of the labour law committee of the law society of South Africa, Jan Stemmett, said the Basic Conditions of Employment Act (97) allowed for, 'any other person (besides a medical practitioner) who was certified to diagnose and treat patients and who was registered with a professional council established by an act of parliament', to issue a medical certificate for sick leave.

'When I saw the notice in the government gazette, I put two and two together. It appears they're making room for traditional healers to be recognised,' he said.

Department of Health spokesperson, Joanne Collinge, agreed that if the bill in its current form becomes law and the 'whole process of establishing the council' is completed and groups of traditional practitioners are registered, then: 'Yes, those letters issued by practitioners would have status in terms of labour law'.

Stemmett said that from an employer's perspective, sick notes from sangomas 'could be problematic'.

'The employer will have to prove that it's genuine because you can't just terminate services. There will be grey areas if some employee has just disappeared and comes back after a long time.'

Labour law obliged employers to be 'fair and reasonable', and it would be difficult to establish whether the medical certificate was real or whether the employee was 'moonlighting somewhere else' (for example).

Dr Shadrack Mazaza, former member of the South African Medical Association's Health Policy Committee wrote his 1995 Master's thesis on the relationship between traditional healers and doctors in a district health care setting.

He said the current 'speculation' had started 'even back then' and that traditional healers fully expected to be able to issue medical certificates. 'My personal opinion is that adding an illiterate group of people issuing sick certificates from their shacks to the mix...well, I just can't see it happening.'

He and Maliga Pillay, legal advisor to SAMA's Human Rights, Law and Ethics Department, questioned the training and qualifications of traditional healers and said the proposed law would 'have

people up in arms and open up a can of worms'.

They emphasised that the draft bill had yet to include any detail on how traditional healers would be regulated, registered, disciplined and remunerated.

Mazaza said he was worried because, 'we (SAMA) are being asked to comment on something we have not even been given to see. We don't know what they (the health ministry) have in mind.'

He added: 'As for the proposed council — if they think they can regulate traditional healers in exactly the same way they can regulate doctors, it's crazy'.

Professor John Terblanche, chairman of SAMA's Health Policy Committee, said legislation upgrading pharmacists to enable them to make diagnoses and charge for treatment was even further advanced than the proposed 'Sangoma Bill'. Both proposed laws seriously impinge on doctors' traditional territory.



*Dr Shadrack Mazaza, SAMA board member and former health policy committee member.*

Jacques Fourie, Vice Chairman of SAMA's GP private practice committee, said his members would 'be totally against this — it just doesn't make sense'.



'Just the possibility that it may happen has warning lights going off in my mind. What will be left for the GP in the end? There simply will not be the same kind of regulatory and quality control and monitoring as there is for doctors. How will they get CPD points, for example?'

The executive committee of the Medical and Dental Professions Board (MDPB) is on record as saying that only certificates of illness issued by registered medical practitioners or dentists should be recognised. The MDPB stresses that medical or dental practitioners merely *recommend* sick leave.

Employers were not legally bound to accept certificates of illness, but had to give 'justifiable' grounds in terms of internal policy or law for refusing them. An employer could also ask for a second medical opinion, but only with the consent and at the expense of the employee.

Pillay added, 'It's really interesting to speculate on what kind of conditions traditional healers will issue sick certificates for — I mean if you suspect

witchcraft is being performed, how do you issue the sick leave — and for how long?'

Collinge responded that 'any system is open to abuse, especially where management in the workplace is poor'.

'It's the quality of management in the workplace that will determine whether there is abuse or not — as is currently the case,' she asserted.

***He confirmed that sick certificates could include diagnoses of 'unnatural causes — maybe the sangoma has the strength to diagnose that'.***

'Professor' Phillip Kubukeli, Advisory Director of the Western Cape Traditional Healers Association, said traditional primary health care was 'inherited from our forefathers and was proved to be working long before Dutch settler medicine came into South Africa. Even in China they use traditional indigenous medicines which are welcomed by their government,' he said.

Welcoming the impending registration of traditional healers, he added, 'Not just any Jack and Jill will issue a medical certificate — we'll have very strict rules on that and on our medication'.

The traditional health practitioners' council would comprise of 'very intelligent people who know about the law — I can't see any problems arising'. He confirmed that sick certificates could include diagnoses of 'unnatural causes — maybe the sangoma has the strength to diagnose that'. He defined unnatural causes as 'something caused by somebody else', and said that if someone was bewitched, they would simply not have the strength to work.

A sangoma would work with the person to restore his health as quickly as possible and would 'set a trap' to catch the bewitcher. 'That way we can close this road of bewitching. Such cases could also be referred to the new council for double-checking. We're very aware of the challenges,' he said.

Kubukeli added: 'Whatever you do there must be proof — you can't make it up'.

Asked what would happen if a worker refused his employer's request to go for a second opinion from a Western medical practitioner he responded without rancour: 'We will revert to the South African Constitution'.

Chris Bateman