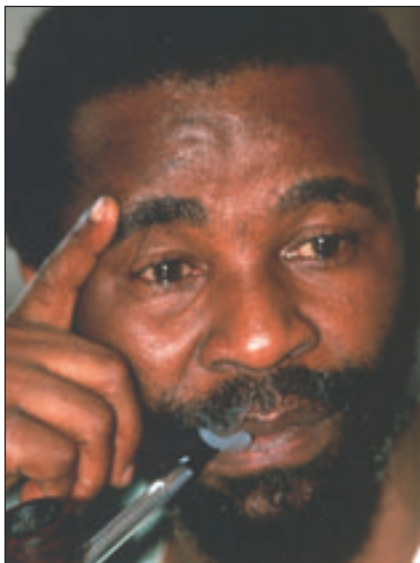




DOCTORS FRET WHILE GOVERNMENT DRAGS HEELS

The office of President Thabo Mbeki took nearly 3 months merely to acknowledge an urgent letter from the South African Medical Association, pleading with him not to sign into law 'draconian' measures dictating where doctors may practise in future.

Confirming this early in January, SAMA chairperson, Dr Kgosi Letlape, said doctors were in the 'catch 22' situation of being powerless to take legal action countering the measures until Mbeki signed the Certificate of Needs bill into law.



President Thabo Mbeki.

'If he signs without giving us a hearing that will be a clear message that he agrees with it and we can then bring our Constitutional Court challenge,' Letlape said. Letlape is on record as saying that the new bill threatens the 'very existence of private medicine in South Africa and will undermine rather than bolster the nation's health care delivery'.

The law means that if a doctor wants to establish a practice or join an existing one, he or she will have to apply for a Certificate of Need (CON). It gives unfettered powers of final arbitration to the Minister of Health and allows the

nine provincial directors general to decide where and under what conditions private doctors may practise.

A clumsy if well-intentioned attempt to create a more equitable spread of health care across the country, the bill has created an uproar among doctors, most of whom agree with the principle but not the effect.

Letlape said he left several messages on the cell phone of Mbeki's legal advisor, advocate Mojanki Gumbi, whom Mbeki had instructed to approach the Department of Health to elicit a response to SAMA's concerns. Attempts by the SAMJ to contact Gumbi and spokespersons for the president proved fruitless.

Letlape said the 'main point is that it's possible to sort it all out before the President signs and to avoid the legal hassle — but we will take legal action if he signs'.

The biggest bone of contention was that a grandfather clause was in the regulations but not the actual bill — giving little legal protection to doctors in existing practices. The way the bill is drafted, the Minister of Health can change the regulations or form new ones at will. Including the grandfather clause in the actual bill would prevent the government from tampering with existing practices (applying the CON retrospectively), instead of just dictating to new graduates where they may practise.

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Letlape said that if SAMA could convince the government to reconsider and include the grandfather clause, the association could then begin negotiating

fairer conditions for young doctors entering practice. 'There are also lots of other things we're concerned about, like the formation of councils and boards, how they are formed and who sits on them. The entire arena of decision-making for health care puts enormous power in the minister's hands. But right now these are secondary to our minimum demand,' he said.

Letlape, who was still hoping for a meeting with Mbeki once the Department of Health had responded to his letter, likened the relevant section of the National Health Bill to some of the worst former apartheid legislation.

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Writing off further attempts to engage the Department of Health as a 'useless exercise where not even sign language helps', he said any implementation of the CON legislation would cause a mass exodus of doctors.

Frustration at being rendered unable to deliver health care to their patients and being forced to leave their families to earn a living would guarantee this. 'You won't have a single doctor left in this country unless you chain them down, take away their passports and detain them. We're being persecuted because of our medical qualification,' he fumed.

He described the CON as 'another form of the Group Areas Act where influx control was practised — we're back to the good ole days'.

SAMA's head of health policy, Professor John Terblanche, said the new bill was being enacted without final regulations being made available for comment, in marked contrast to KwaZulu-Natal, which spearheaded it but embraced SAMA's recommendation



SAMA chairman, Dr Kgosi Letlape.

to omit the CON. 'The government doesn't have the infrastructure to deal with certificate applications from every private doctor, pathology group, clinic — and when a local director general says no, the appeal goes to the minister who will obviously support their DG,' he said.

Letlape said 'the large bulk' of health care delivery that should be public sector responsibility was already being handled by the private sector. In his letter to Mbeki he says SAMA clearly understands that the law's intention is for an equitable distribution of doctors, but that the effect will be to 'exponentially intensify' the insecurity

and demoralisation felt by most junior doctors.

In spite of SAMA exhortations to a Parliamentary Portfolio Committee hearing on the National Health Bill to scrap the CON or 'at the very least' to include a 'sunset clause' for existing practices, neither concern was addressed in the draft.

The Junior Doctors Association of South Africa, Judasa, said the government already expected junior doctors to go where they were sent for internship training and community service. The prospect of another regulatory system restricting their right of free association made 'any real future in the medical profession in this country' a daunting prospect.

Judasa Chairperson, Dr Marietjie Slabbert, said juniors already felt they were not appreciated 'in their own country by their own government'. 'We are confronted by appalling public sector working conditions and many members feel unable to safely invest in a secure future in this profession in South Africa.' Market forces, technologies and infrastructure were the (correct) way to attract doctors to under-served areas.

Letlape said the mode of regulation was not rationally related to the objectives of the legislation. It would be less restrictive to implement

accreditation systems to incentivise doctors to set up practices in under-served communities.

Although SAMA viewed the law as an undue restriction of a doctor's constitutional right to freely choose his/her trade, occupation or profession, it recognised that the constitution suggested that legislatures could regulate this right. However, most crucially, SAMA argued that the legislation could not regulate the practice of medicine without regulating the choice of an occupation, as these two concepts were not mutually exclusive.

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The law was irrational, arbitrary and defeated its proposed aims and objectives. This was short sighted, indicated poor research nationally and internationally, and was 'not for the common good of doctors or the public'.

Chris Bateman