



## OSD STRIKERS: POSSIBLE CENSURE IN 6 MONTHS



Registrar of the HPCSA, Advocate Boyce Mkhize, on left, with former chairperson of the Medical and Dental Professions Board, Professor Len Becker (back) and Professor Jan van der Merve, the HPCSA's former special investigator into unacceptable business practices during a 2003 workshop on perverse incentives.

Picture: Chris Bateman

A total of 252 (not 76 as first thought) public sector doctors from Durban hospitals are being targeted by the Health Professions Council of South Africa (HPCSA) for professional conduct enquiries after taking part in June's salary strikes. They will know their fate only by the middle to latter part of next year.

This emerged last month in an *Izindaba* interview with Advocate Tshupo Boikanyo, the legal services manager at the HPCSA, and his colleague Bertha Peters-Scheepers, the HPCSA's senior manager, Public Relations and Service Delivery.

The HPCSA demanded written explanations from 16 doctors at Addington Hospital's paediatric department, alleging they 'refused to attend to life-threatening emergencies' during their strike in support of salary hike demands made during the Occupational Specific Dispensation (OSD) wage negotiations.

***The preliminary enquiry is to establish whether each doctor has a prima facie case to answer.***

Another 60 doctors working at 6 public sector hospitals across the Ethekwini District (Greater Durban) received a similar letter, this time claiming an alleged 'dereliction of duty' in favour of striking.

That was the initial tally confirmed by the HPCSA. However, in a terse communique right on *SAMJ* deadline, Peters-Scheepers revealed that this number had swollen to 252. The complainants were from the Department of Health (University of KwaZulu-Natal), one of the doctors at Addington Hospital and a manager in the Ethekwini district office. Boikanyo said of the strikers in mid-September, 'we're still waiting for most of the explanations – they have 40 working days to respond – but some of their various attorneys have requested extensions, so

we'll consolidate it all when they're all finally in'.

Once this was done the HPCSA would conduct a preliminary enquiry with the relevant professional board convening to hear evidence and recommend whether the respondent should answer to a full professional conduct enquiry.

'This all usually takes 6 months, but we're trying to fast-track these complaints, depending of course on the explanations coming in. You can safely say the time frame is 6 months, because the regulations are pre-emptive and pre-emptory – there are no short cuts,' Boikanyo added.

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### Long wait to hear their fate

March will be the earliest most of the respondents know what direction their individual case is taking, with the subsequent consolidated preliminary enquiries taking several weeks to conclude. Any ensuing professional conduct enquiries could take months to hear before findings are made.



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During the protests angry strikers across the country dared the government to fire them and risk collapsing its hospital service delivery capacity while watching them go into private practice or emigrate.

At the time the HPCSA Registrar, Advocate Boyce Mkhize, 'advised' the doctors that he was 'obliged' to inform regulatory bodies worldwide once a complaint had been lodged against them.

'This has a huge bearing on whether the doctor is registered in that jurisdiction to which they may want to emigrate. Furthermore the HPCSA issues a certificate of status – a prerequisite for registering in another jurisdiction ... Other regulatory bodies would not knowingly register doctors with issues of misconduct against them. Once doctors are deregistered or suspended they (also) cannot enter into private practice in South Africa,' he added.

### **Mkhize's sabre-rattling**

Citing the laws that prevent emergency service workers from striking (owing to the absence of a minimum service level agreement), Mkhize added ominously that the doctors' failure to heed repeated HPCSA warnings not to strike could 'only serve as an aggravating factor during sentencing'.

His statement failed to mention the plethora of pre-conditions required before a formal enquiry can be launched.

These include a complaint in writing to the HPCSA with contact details of the complainant, a list of the doctors involved (including ID or practice numbers), the circumstance of the complaint, the name of the patients affected, and how they were affected (to establish negligence or detriment).

The 'accused' doctor then has 40 working days to provide an explanation before a preliminary enquiry decides on whether grounds exist for a formal professional conduct enquiry.

Mkhize did however list the penalties for practitioners found guilty of improper or disgraceful conduct.

These range from a caution or reprimand (or both), suspension from practising, a fine, a compulsory period of professional service, payment of the costs of proceedings or 'restitution', or both.

Ironically the entire process will track along with the most comprehensive and ambitious attempt yet to overhaul the

public sector health care system – designed to prepare public and private facilities for National Health Insurance (NHI) accreditation from the latter half of next year.

NHI expert task team chief, Dr Olive Shisana, told *Izindaba* that for the first time ever public sector facilities would be regulated.

'In the past we've regulated the private sector, not the public. The NHI will change that. We're saying you in the public sector (and private) have to meet this standard or criteria in order to become a member of the NHI. The state was never regulated in terms of public service delivery; perhaps that's why they've had such a lousy quality of service,' she added.

The NHI was 'not as ambitious as people say,' she said.

South Africa had already introduced universal access to primary health care, an essential drug list was being completed 'as we speak', there was a plan to increase the number of health care providers and retain existing ones, and facility management was being interrogated to ensure 'the right people and competencies are there'.

'These are the building blocks of NHI. If somebody asked me have we started implementing NHI, I'd say yes we have,' Shisana said in September.

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Health Minister, Dr Aaron Motsoaledi, has announced a detailed time-based plan to bring more health care workers on line, pay doctors better, improve drug availability, reduce theft, inefficiency and corruption, and overhaul facility management.

In the meantime 252 of those public sector doctors whom these very conditions, on top of broken OSD back-pay promises, tipped into a risky unprotected strike, will have to live with the unknown, probably until late next year.

The South African Medical Association (SAMA) leadership is meanwhile known to have quietly approached the HPCSA to plead leniency in recognition of the strikers' dismal working environments.

SAMA's public sector committee will almost certainly facilitate testimony in mitigation of sentence should any of the strikers be found guilty.

**Chris Bateman**