



TOO LATE FOR TEARS AS MANTO SMELLS VICTORY?



Health Minister, Dr Manto Tshabalala-Msimang.

A fierce row between government and most health care professionals has resurfaced as draconian draft legislation stands poised to abolish the autonomy of the country's 12 regulatory health care boards, effectively turning them into state 'puppets'.

The Health Professions Amendment Bill gives Health Minister Manto Tshabalala-Msimang unbridled authority to appoint a majority of nominees to any of the boards, obliterating any pretence at democracy, in the name of ensuring 'faster transformation'.

The legislation, if signed by President Thabo Mbeki in defiance of a flurry of furious last-minute objections from the Medical and Dental Professions Board (MDPB) and the South African Medical Association (SAMA) will wreck the independence of these statutory bodies. Each board is supposed to function independently, both of the profession

it represents and government, in order to 'protect the public and guide the profession'. Boards oversee standards of education, practice ethics, decide who may register or not, conduct professional conduct enquiries and give expert advice to the Health Professions Council of South Africa (HPCSA) and the Minister on matters affecting the population's health.

Angry letters flew between the MDPB chairman Professor Thanyani Mariba and HPCSA President Dr Nicki Padayachee over the processes that have given the health ministry a near winning hand on the proposed law. At the centre of the correspondence row is the conduct of the Registrar of the umbrella HPCSA, Advocate Boyce Mkhize.

Mkhize is strongly sympathetic of the government's move while Padayachee is a Tshabalala-Msimang appointee and successor as HPCSA president to the independent-minded Mariba.

Mariba, as chairman of the largest and once most influential board on the HPCSA, accuses Mkhize of hostilely withdrawing administrative support, failing to attend crucial meetings, blocking access to the health minister and deliberately misrepresenting the MDPB's views on transformation.

NCOP poised to approve bill

In response to an initial outcry and referral of the bill by the National Council of Provinces (NCOP) to each province for further consultation, plus a challenge by the MDPB, the HPCSA convened a consultative workshop of the boards in May.

Recognising the need for transformation, an alternative proposal was developed which would retain elections of members by the profession but would require the boards to meet specific transformation targets.

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Mariba said that the MDPB had already implemented this after their first election in 1999 and had transformed from being 81% white in 1994 to a current majority of black members (66%) via an ongoing process of weighting votes, making it fully representative demographically, and had strongly encouraged other boards to do the same.

Over the past several months boards met individually to debate the new election/transformation option, with six boards eventually voting in favour of the amendment bill and five choosing to retain the conditional election process.



HPCSA President, Dr Nicki Padayachee.



The MDPB vote in favour of elections would have created a 6/6 stand-off, but was ruled invalid by Padayachee and Mkhize, who said Mariba's board meeting had no proper quorum. They also refuted his authority as MDPB chairman as being sufficient to represent members' views. The MDPB subsequently confirmed in a full meeting that it supports the election option, something rejected by Padayachee as 'being neither here nor there'.

Given the 'lack of a clear majority', the exco of the HPCSA resolved that there was 'insufficient justification' to depart from the propositions of the Bill that give the Health Minister power to appoint members of the various boards.

The National Assembly's Portfolio Committee on Health was due to consider minor alterations to the Amendment Bill on 14 August 2007, taking only written outside representations. The bill then goes to President Mbeki for final ratification.

'The biggest change is that the HPCSA will now act more in the public interest and less in professional interests – unions like SAMA are there to protect the professions. Lots of boards, like psychology and physiotherapy, were being marginalised,' he said.

MDPB members are outraged over what they see as a 'steamrolling' of the legislation, especially given the health minister's controversial track record and her historic spurning of the best scientific research and advice available on HIV/AIDS.

Mariba, in an 11 June letter to Padayachee this year, lodged a formal complaint against Mkhize, for what he terms 'unilateral...and uncouth behaviour' that he believes helped create the current 'crisis of democracy'. He claims Mkhize unilaterally withdrew



HPCSA Registrar, Advocate Boyce Mkhize.

from a vital MDPB meeting on 4 June without giving reasons and sent out an e-mail to his staff instructing them not to give the MDPB board any clerical or administrative support the following day.

'I find this behaviour unacceptable and unprofessional...Mkhize is an employee of Council and therefore boards which constitute Council. He has no power to decide on the agenda of the boards, neither has he the right to change dates unilaterally,' writes Mariba.

He requested Padayachee to 'put this uncouth behaviour' on the agenda of exco of Council at its next meeting, 'and to attend to the matter immediately'.

Padayachee holds the Manto line

Padayachee told *Izindaba* that he would take 'this very serious personnel issue' to his exco before deciding whether to put it on the official council agenda. HPCSA staff were not in the employ of the MDPB and had raised 'serious concerns and allegations' about how certain MDPB members had treated them.

The MDPB conduct came 'in spite of intense consultation' by the HPCSA with the previous MDPB board, whose decisions or omissions were binding on the current board.

He said the legislation was in response to 'the extremely slow pace' of

transformation and in line with similar laws already governing the nursing council, the medical research council, the council for medical schemes and the national health laboratory services.

'The biggest change is that the HPCSA will now act more in the public interest and less in professional interests – unions like SAMA are there to protect the professions. Lots of boards, like psychology and physiotherapy, were being marginalised,' he said. 'Sometimes you get overarching issues and the HPCSA has to overrule the interests of a particular board in favour of the public at large,' he added.

Padayachee confirmed that the HPCSA's budget came from each board's professional members 'plus investments and donations'. Only the HPCSA was a legal entity and if the minister wanted an opinion or advice she would approach his council, which in turn would consult boards, as necessary. 'Basically the opposition now comes in spite of council having taken a position thrice in favour of moving forward on this legislation – I've never seen legislation, apart from the national health act, that had more consultation,' he added.

The HPCSA is heavily weighted in favour of the health minister, with only 25 of its 52 members coming from the professional boards and several of those board members themselves being ministerial appointees to the boards.

Padayachee wrote: 'Assuming your board also was in favour of retaining the elections, it simply means there was no majority view for this'.

We are the gatekeepers – Padayachee

No MDPB member should approach the Minister 'without the HPCSA'. He expressed concern that the MDPB 'may not have had the benefit of the guidance





and leadership necessary to clarify these processes' during debate on the matter.

If this were true, Padayachee wrote, it would be 'of considerable concern, particularly because you (Mariba) serve in the HPCSA and its exco'. He took exception to reports that Mariba was 'actively mobilising other professional boards to take issue with the Council's already declared position', and found this 'inconsistent with the HPCSA's Charter of Councillors'.

He estimated that the 6 boards opposed to the amendment represented 85% of all professionals registered with the HPCSA, and even excluding the MDPB, the 5 boards represented 75%.

He said Mkhize was not prepared to undermine the legal status and position of the council, and just because the council did not always take the same views as the MDPB, this did not mean that the Registrar should 'be subjected to insults and abuse'.

Mariba told *Izindaba* that the quorum issue was deliberately abused in order to sideline the MDPB, whose members had given him full authority to express their views.

In his letter to Padayachee, he expressed dismay over how Mkhize reported the process after the consultative forum of the boards and over what Mkhize conveyed to the National Council of Provinces and other government bodies.

He said Mkhize's letter to the health ministry was never copied to the various boards, in spite of 'the heat generated on this issue' while he (Mariba) was 'totally within my rights' to circulate a memo to all other boards expressing the MDPB's concerns.

Minister already in driving seat

The MDPB believed that exact details on representivity and transformation belonged in the impending regulations of the legislation and not in the Act itself. Mariba ended with: 'If my board thinks I am not doing a good job, surely they have the right to vote in another chair or let the vice chair take over?'

'Can we assume the same of the HPCSA?' he asked sharply. The HPCSA is heavily weighted in favour of the health minister, with only 25 of its 52 members coming from the professional boards and several of those board members themselves being ministerial appointees to the boards. It needs only a small minority of these board members to back her to secure an overwhelming majority.



HPCSA and MDPB exco member, Professor Max Price.

Professor Max Price, an MDPB and HPCSA member and former Dean of Health Sciences at the University of the Witwatersrand, told *Izindaba* that in spite of the 5/6 vote, he estimated that the 6 boards opposed to the amendment represented 85% of all professionals registered with the HPCSA, and even excluding the MDPB, the 5 boards represented 75%. The MDPB had about 39 000 members while the smaller

boards had 'less than 2 000' members each.

'Most of us believe that this is about democracy and law making and the role of the boards themselves. Boards are meant to have an arm's-length relationship with government and their professions and to be strong and independent advisory and regulatory bodies. This law would make them puppets of government,' he said.

He cited the example of the former SA Medical and Dental Council (precursor to the MDPB) refusing to strike from the register the doctors who failed to properly treat the late black consciousness leader Steve Biko for injuries sustained in detention.

'This amendment would turn the MDPB back into a puppet of government,' he added.

An *Izindaba* exposé last year of a series of 'unpredictable and embarrassing' social indiscretions by Padayachee during an earlier official government overseas trip led to an MDPB outcry and the HPCSA appointing an internal task team to probe the claims.

No member of the task team, whose report resulted in no further action begin taken, ever approached *Izindaba* to discuss the article, and its veracity remains unchallenged.

SAMA's national council resolved this July to urge President Mbeki not to sign the Act into law (if the NCOP passes it), and for its board and secretariat to 'promote and pursue the establishment of a transformed, elected and autonomous statutory Medical Council'.

Price confirmed that a legal challenge by the MDPB was possible if the government insisted on passing the law without proper consultation.

Chris Bateman

