

ISSUES IN MEDICINE

Sick certificates issued by South African traditional health practitioners: Current legislation, challenges and the way forward

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Traditional health practitioners (THPs) play a significant role in South African healthcare. However, the Basic Conditions of Employment Act (BCEA) does not consider sick notes issued by THPs to be valid. This creates a dilemma for employees, whose right to consult a practitioner of their choice is protected by the Constitution. We assessed the current legislation and highlight the challenges that employees face in selecting a healthcare system of their choice. The services of THPs represent an untapped capacity that can complement and strengthen healthcare services, especially in the workforce. The BCEA legislative technicality, coupled with

the delayed establishment of the Interim THP Council, does not relieve the employer's burden of 'illegitimate' medical certificates issued by THPs. While seen as a dilemma for some employers, others have accommodated African cultural beliefs and accept THP-issued sick notes. Finalising the Interim THP Council will allow THP registration and oblige employers to honour sick notes issued by THPs. The empowerment of THPs to play a meaningful role in healthcare delivery is of national importance.

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Since the African Union (AU) declared the Decade of African Traditional Medicine in 2001, African governments have recognised the wide use of traditional medicine, and the importance of optimising its integration into national health systems.¹ The World Health Organization (WHO) Traditional Medicine Strategy 2002-2005 provided a framework to promote traditional medicine and its integration into national healthcare to reduce mortality and morbidity, especially in the least-developed countries.² The WHO categorises national health systems on the extent to which traditional medicine is a recognised healthcare component:² (i) in an *integrative system*, traditional medicine is officially recognised and incorporated into all aspects of healthcare provision (only attained by China, Democratic People's Republic of Korea, Republic of Korea and Vietnam); (ii) in an *inclusive system*, traditional medicine is recognised, but is not fully integrated into healthcare provision; and (iii) in a *tolerant system*, national healthcare is based entirely on allopathic medicine, but certain traditional medicine practices are tolerated by law, as in South Africa.³ The 2008 draft policy on African traditional medicine⁴ provided a framework to institutionalise traditional medicine in South Africa, which, according to the WHO, means 'the formalization and official incorporation of traditional medicine into national health systems and services'.⁵

Some 80% of South Africans use traditional medicine to meet their primary healthcare needs.² Traditional health practitioners (THPs) have catered for the needs of millions of South Africans over centuries; however, the marginalisation of traditional medicine is linked to the historical legacy of apartheid and colonialism,⁶ causing

a divide in medical care, systems and practice. The African National Congress (ANC) Health Plan of 1994 stated that 'traditional healing will become an integral and recognized part of health care in South Africa. Consumers will be allowed to choose whom to consult for their health care, and legislation will be changed to facilitate controlled use of traditional practitioners'.⁷

The right to choose a healthcare system remains biased towards the allopathic system, particularly for employed citizens with medical insurance. The informal and partially regulated system of traditional healing in South Africa does not legally support THP-issued sick notes for absenteeism from work. This frustrates THPs and traditional medicine users. Nonetheless, some government and private institutions support employees' rights by making THPs available for consultation, and by accepting THP-issued sick notes under specified conditions. However, ambiguity and inconsistency confuse employees and policy-makers. We highlight the shortfalls, progress and necessary developments in South African traditional medicine regarding recognition of the validity of THP-issued sick notes.

THPs and help-seeking behaviour

Innovative ways of providing comprehensive patient care call for the identification and classification of patient help-seeking behaviour. Health intervention and policy experts must be aware of human behavioural factors for quality healthcare provision;⁸ however, the patterns of health-seeking behaviour of South African traditional medicine users are poorly studied. THPs have respect, credibility and acceptance among those they serve, and thus form a critical part of the healthcare delivery system.⁹ As THPs share similar cultural values to their patients, they are often the first point of call for healthcare. Up to 90% of people living with HIV and AIDS consult THPs before visiting allopathic medicine practitioners.^{10,11} Reasons for consulting THPs range from chronic and acute conditions to supernatural (bad luck and magic poisoning) and psychosocial problems (depression, anxiety, and sexual dysfunction).⁹ THPs are considered to be cultural custodians within the African society and influence the interpretation of illness and mode of behaviour through cultural interpretations. They can control therapy, serving as a conduit transmitting general social values, and reshaping and reinterpreting those values in the healing process.¹²

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Legal frameworks governing THPs and the issuing of sick notes

The Department of Health (DoH) white paper for transforming the health system in South Africa recognised the importance of THPs in primary healthcare.¹³ The Traditional Health Practitioners Bill was introduced to Parliament in 2003, and the Traditional Health Practitioners Act (THPA) of 2004 was signed into law on 7 February 2005.¹⁴ The Constitutional Court ruled that this Act be returned to Parliament, as it was improperly processed by the National Council of Provinces (NCOP).³ Doctors for Life International (DFL), which upholds Christian moral values,¹⁵ opposed the THP Bill and the THPA, arguing that medical practice not based on the allopathic system is potentially harmful to the public and economically detrimental.¹⁶ Following public meetings in all provinces in 2007, the THP Bill (Bill 20 of 2007) was approved³ and the THPA (No. 22 of 2007) was signed into law in 2008.¹⁷ This sparked public interest, and raised employers' concern that it would cause rampant abuse of sick leave and absenteeism.¹⁸

The THPA provides a means of regulating THPs and establishing an Interim THP Council for their registration. However, this council has not yet been established. Registration of THPs by a statutory body will legitimise THP-issued sick notes in compliance with section 23(2) of the Basic Conditions of Employment Act (BCEA) (75 of 1997). The Act specifies that an employer is not required to pay an employee who has been absent from work for more than 2 consecutive days or on more than 2 occasions during an 8-week period and, on request by the employer, does not produce a medical certificate stating the employee's inability to work on account of sickness or injury.¹⁸ Furthermore, a medical certificate must be issued and signed by a medical practitioner or another person who is certified to diagnose and treat patients and who is registered with a professional council, e.g. doctors, psychologists and dentists registered with the Health Professions Council of South Africa (HPCSA). Provisions are also made for medical certificates issued by professionals registered with the Allied Health Service Professions Council (AHSPC), including Chinese and Indian traditional medicine, but African THPs are excluded.¹⁶ Until THPs can register with their proposed statutory council, their sick notes remain unrecognised by the BCEA.

According to the THPA of 2007, the Interim THP Council formation is a function of the Ministry of Health. No explicit reasons have been given for its non-formation, which has rendered the THPA immaterial.¹⁹ The delay in the formation of the Council might have been brought about by changes in government since the THPA was signed into law on 7 January 2008 by then President Mbeki. Mbeki was recalled by the ANC later that year, leading to the resignation of the cabinet. An acting Minister of Health was appointed by then Acting President Motlanthe. The ANC held its elective conference in 2009, which was followed by national elections and the appointment of a new Minister of Health, Dr Motsoaledi, by President Zuma. The Interim THP Council was not prioritised, as is evident from the 10-point plan of the DoH.²⁰ THPs marched to the Union Building in Pretoria in early 2011 and handed over a petition, registering their dissatisfaction with the manner in which the government – in particular, the Ministry of Health – was treating traditional healers.²¹ Items included the formation of the Interim THP Council, recognition of THP-issued sick notes, medical aid payment to traditional healers, and funding and protection of research on traditional medicines.²¹

Traditional medicine users: financial burdens and rights

Distance is not considered to be important in the need for traditional therapy; patients travel far and wide to seek assistance from THPs

specialising in areas of health, and usually opt for THPs who do not know them personally. This is justified by arguments that expert THPs may not live in the same area as their patients.²² The expense of travel and THP consultation is exacerbated by the need to consult a medical practitioner to obtain a medical certificate. Patients often consult a medical practitioner when they no longer have symptoms, and are consequently refused a medical certificate for ethical reasons. Patients may forfeit sick leave for unpaid leave, further aggravating the financial burden of consulting a THP. Overall, this may promote fraudulent behaviour and waste medical resources.

Aggrieved employees who consult THPs can use their constitutional right to challenge the current state of legislation on grounds set out by Chapter 2 of the South African Constitution. The BCEA governing the issuing of medical certificates fails to provide equality, protect human dignity and to recognise the employee's right to practise their customs and beliefs without prejudice. The Bill of Rights states that every citizen has a right to participate in the cultural life of their choice,²³ thus violating the employee's right to freedom of conscience, religion, thought, belief and opinion. Although challenging the constitutionality of the BCEA does not provide an immediate solution for the employee, the grounds for the challenge are valid.

Current initiatives and achievements

While THPs are a dilemma for some employers, others accommodate African cultural beliefs and accept sick notes from THPs. The University of Pretoria and the National Education, Health and Allied Workers' Union (NEHAWU) entered into an agreement to accept sick notes, for one week at a time, issued by THPs registered with an association.²⁴ The Chamber of Mines and the National Union of Mineworkers (NUM) have allowed a panel of traditional healers at mines and granted employees 3 days of leave to consult THPs.²⁵ Sun International and the South African Commercial Catering and Allied Workers Union (SACCAWU) have adopted a similar agreement. The University of KwaZulu-Natal (UKZN) has a THP on its staff and student counselling and wellness programme.

In the 1990s, several medical aid schemes offered limited alternative healthcare benefits for members consulting THPs.^{3,26} However, they withdrew following publication of the Medical Schemes Act (Act 131 of 1998),²⁷ citing their legal obligation to reimburse registered providers only. Implementing the THPA would eliminate lawful hindrances to providing traditional medicine benefits in medical schemes.³ This issue has become more important with the proposed rollout of the National Health Insurance (NHI) by the South African government from 2012. The NHI green paper published in 2011²⁸ excluded THPs from the National Health System, thus continuing the marginalisation of THP practices. Gqaleni *et al.* discuss the issue of traditional medicine and medical schemes in greater detail.³

Despite lacking official recognition, there have been achievements and several capacitating projects involving THPs in the strategic planning of health issues, e.g. THPs partake in community HIV-alleviation projects. The 'Bio-medical and traditional healing collaboration on HIV project' – a collaboration of the UKZN through PEPFAR (US President's Emergency Plan for AIDS Relief), eThekweni municipality and KwaZulu-Natal DoH – promoted a partnership between public health clinics and THPs, and provided training on prevention, palliative care, voluntary counselling and training (VCT), record-keeping and referral.⁶ Some provincial and local health departments, such as the Free State, KwaZulu-Natal and North West Departments of Health, and eThekweni and Ekurhuleni Municipalities, have designated traditional medicine managers. The eThekweni manager oversees traditional healing integration into the municipal health system and encourages two-way referrals

and collaboration between clinics and THPs. NGOs such as the AIDS Foundation South Africa (AFSA), the African Medical and Research Foundation (AMREF) and the Valley Trust collaborate with traditional healers to promote community wellness.

Towards the inclusion of THPs in employee wellness programmes

To meet South Africa's health service needs, healthcare providers have a moral and medical responsibility to ensure that patients have access to the best of traditional and biomedical systems of care.²⁹ The large influence of THPs within company workforces should motivate their formal inclusion in employee wellness programmes. Initiatives by employers to ensure their employees' optimal wellness should be culturally sensitive. Failure to involve THPs in some capacity demonstrates management's lack of understanding of the beliefs and values of their workforce.³⁰ Government, civil society, and community decision-makers and programme managers should be equipped with the information and tools to successfully integrate these systems.²⁹ Relieving the dilemma of sick notes includes implementing a referral system with a designated database of THPs to whom employees can be referred. Alternatively, sick note verification could be addressed by employers having a designated THP for their employees.

Traditional healers are an untapped capacity that can complement and strengthen healthcare services. Despite considerable discussions, the resources allocated to support this approach remain insignificant in relation to what can and must be accomplished to achieve this goal.²⁹

Conclusion

The delay in establishing the Interim THP Council has not stopped the mobilisation of an estimated 200 000 THPs in South Africa who belong to over 100 separate organisations.^{3,26} Despite calls for the recognition and regulation of traditional healers and medicines, this has been sporadic, insufficient and controversial.¹⁶ The execution of the THPA will ensure that traditional healers are on an equal footing with other healthcare practitioners in South Africa.³ The BCEA legislative technicality coupled with delayed establishment of the Interim THP Council does not relieve the burden of 'illegitimate' medical certificates from THPs. The growing international popularity of traditional medicine signals a new era for the South African traditional medicines system to create opportunities for the benefit of indigenous knowledge and traditional medicine users. This calls for innovative and integrative approaches to developing wellness programmes, to ensure their efficacy and improve employee productivity. The potential benefits of including traditional healers outweigh the disadvantages.¹⁶

South Africa recognises and has legislation that legitimises almost all of its healthcare systems, yet the legitimisation of its indigenous healthcare system, used by the majority, has been delayed. The THPA and the draft national policy on traditional medicine should compel the national Minister of Health to constitute the Interim

THP Council which will register THPs and solve the problem of the validity of their sick notes.

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