

Protecting the Public, the HPCSA or the Profession?

The past 2,5 years has been an extraordinarily eventful period for the new Health Professions Council of South Africa (HPCSA). It came into being amidst great controversy in 1998 following democratic elections, in which a largely “pale male” (to quote the Sunday newspapers) Medical and Dental Professional Board (MDPB) was elected. Dr. Zuma, the then Minister of Health, dragged her feet in appointing her representatives to the MDPB for months, probably hoping the “problem” would go away if she waited long enough, and delaying the inauguration of the new HPCSA and its Professional Boards. No sooner than the new HPCSA first met, its newly appointed CEO and Registrar, Dr. Ashley Memela, resigned amidst a cloud of controversy, compounding the administrative problems plaguing the organisation after an extensive transformation process.

A new crisis of much larger proportions is simmering underneath the surface. There are increasing concerns that the HPCSA is failing in its primary mission, to protect the public against the unprofessional and sometimes dangerous conduct of some members of the health professions. Newspapers are regularly reporting about the poor performance of the investigative and judicial system underpinning the HPCSA’s action against practitioners accused of misbehaving in their profession. The perception is that lawyers defending practitioners in professional conduct enquiries have an easy task against the inexperienced and at times perceived to be incompetent legal practitioners employed by the HPCSA. The HPCSA has recently employed its own legal practitioners in order to save costs. Some of the young and inexperienced lawyers employed by the HPCSA had to face the very best legal brains in the private sector; the best money can buy.

The result in many cases: poor case preparation, high acquittal rates and light sentences for those practitioners who were convicted.

Even more disturbing is the perception that the health professions themselves are covering up the misconduct of their colleagues. Doctors very rarely lodge complaints with the HPCSA about the misconduct of a colleague. The HPCSA lawyers have very often a

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difficult time finding expert witnesses willing to testify against a colleague. And even when a practitioner has been convicted in a professional conduct enquiry by a panel of peers, the perception is that the sentences are usually extremely light - a small fine or at the most a suspended sentence. Removal from the register is an extremely rare occasion.

Although some of these perceptions may be inaccurate, the fact remains that the image of HPCSA and with it the medical profession is in a pretty bad shape at the present time. The danger is that the public will lose faith in the HPCSA as its protector and turn to the civil courts instead, following the trend in the U.S.A.

The HPCSA needs to act with firmness and speed to reverse the present state of affairs. The system of dealing with alleged unprofessional conduct needs a

drastic overhaul. Foremost, competent and experienced lawyers in the private sector need to be contracted again to investigate and deal with charges of unprofessional conduct against health professionals. The system of sentences may also need new thinking. There are calls for public representation on professional conduct committees, which may bring more balance in the interest of the public when it comes to the sentence. A system of minimum fines or sentences for certain transgressions may also bring more consistency.

Ultimately, the responsibility of maintaining high standards of professional conduct lies with the professions itself, and maybe that is where things have gone wrong in the first place. One only has to consider the blatant ignoring of the rules of advertising in the daily newspapers to realise that something seriously is wrong. Doctors who are turning a blind

eye to such “small” offences may also be tempted to turn a blind eye to the more serious transgressions of colleagues, such a perverse incentives, over-servicing and fraud.

Individual practitioners need to re-examine their priorities when it comes to professional conduct and the toleration shown to misbehaving colleagues. The organised profession need to get its house in order and “clean up” the branches and regions. A policy of zero-toleration to “small” offences will get the message across.

Maybe then the public will regain its faith in the ability of the profession to regulate itself, and the protection the HPCSA does offer.

The alternative is more regulation by others.

Pierre de Villers
Editor