

Ethical Issues in Family Practice

This is the next in a series of columns, which will appear in future editions. The authors will use the format of a “case study” which will be presented and then be discussed by two doctors (A and B) over a well earned coffee break in their tea-lounge. The authors hope that their exploration of the ethical issues involved in each situation may provoke you, the reader, into thinking more about the ethical issues inherent in everyday Family Practice. If you would like to pursue any of the issues in more depth, please drop a line to the editor.

Alleged medical misconduct - Who is the patient's advocate?

“...Consumers are getting sick and tired of professional protectionism, if the medical fraternity fails to get its house in order the image of doctors and allied professionals will decline and a government crack-down through tough legislation won't be far behind.” **“Will these physicians heal themselves?”** *Financial Mail April 21, 2000.*

In light of the ongoing publicity concerning professional protectionism, in this discussion we overview the role of the Health Professions Council of South Africa (HPCSA) in cases of alleged medical misconduct. We further suggest that to confine the dialogue to medical associations does not give the public the proper perspective in addressing issues of alleged medical misconduct.

What follows is a discussion between two doctors (A & B), on the above question:

Dr. A: I've noticed in many recent articles on alleged medical misconduct that representatives from, for example, South African Medical Association (SAMA) are quoted, but there is hardly an interview with the Health Professions Council of South Africa (HPCSA). I thought the HPCSA was the governing body concerning medical practice.

Dr. B: You are right, the HPCSA is the governing body. This type of reporting I believe misleads the public. Because SAMA and other medical associations are voluntary; their power with regards to discipline is, in a sense, limited. This is not to say that their interests and concerns are not well placed and valid. But, for example, the worst penalty they can impose is expulsion from their membership, but this does not affect a doctor's right to practice medicine in South Africa. The HPCSA, on the other hand, is vested with a wide range of powers in protecting the patient and guiding the health professions. One of its major functions is to exercise disciplinary powers over medical practitioners registered in terms of the Act (Health Care Act 56 of 1974 as amended by Act 89 of 1997). In other words, it has the power to open an enquiry in response to any complaint or allegation of improper or disgraceful conduct or restrict practice in cases of disability or drug use, investigate the allegations, reach a finding and impose (or not) penalties.

Dr. A: So the HPCSA is the sole repository of the power to decide what is ethical and unethical in medicine, makes the rules governing the practice of medicine and can discipline its members whose annual subscriptions are up-to-date, should rules be broken.

Dr. B: Yes, but its powers to discipline are not restricted to just prohibit conduct as laid out in their published rules (GN R 2278 of 3/12/1978 as amended). The

HPCSA can also act outside of their published rules and can impose sanctions not under the somewhat fluid categories of 'improper' or 'disgraceful' conduct.

Dr. A: So, let us say that a doctor has allegedly broken one of the rules, published or unpublished, or does something to warrant action by the disciplinary committee of the HPCSA. The case is brought to the attention of the HPCSA, is investigated, findings are reported, and if found guilty, the doctor is punished. End of case, or is that how it goes?

Dr. B: Well, it's not that simple, and this is where we find medicine and law in close interaction. Medical practitioners may also be brought to the attention of the HPCSA in the following way: Take for example, **Dr. X is involved in a case of medical aid fraud resulting in a court trial.** The court finds him guilty, and he is ordered to refund the ill-gotten money to the Medical Aid Scheme plus a suspended jail term. However, here's where the 'catch' comes in, There is a **duty** upon a court of law to bring this prima facie proof of unprofessional conduct **to the attention** of the HPCSA.

Dr. A: If prima facie proof of unprofessional conduct is presented to the HPCSA, is there a **legal obligation** imposed on the HPCSA to conduct an enquiry? Further, in cases that have gone before the courts, can the HPCSA postpone their inquiry until the court case has been completed?

Dr. B: The response to your first question is that where a registered practitioner either before or after registration, has been convicted of any offence by a court, he or she may be dealt with by the HPCSA under its disciplinary powers, if it is of the opinion that such offence constitutes “improper and disgraceful conduct”.

The answer to your second question is that, in the case of a complaint, charge or allegation which forms the subject of a criminal case in a court of law, the HPCSA may postpone the holding of an enquiry until the court case has been determined. Let us follow this case to its logical conclusion - the court found Doctor X guilty of medical aid fraud. What penalties could be imposed on him or her by the HPCSA?

Dr. A: From what I have read, cases are reviewed on a case-by-case basis. So, there is no one absolute answer to your question. Under the national directive, the HPCSA may impose the following penalties under the category of “improper or disgraceful” conduct against registered practitioners:

- a caution or reprimand, or a reprimand and caution; or
- suspension for a specified period from practising or performing acts specifically pertaining to a practitioner’s profession; or
- removal of a practitioner’s name from the register; or
- a fine not exceeding R 10,000.00.

And, apart from these, the HPCSA also has the powers of restricting persons from practice or suspending them on other grounds such as set out in section 51(1):

- A practitioner has become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow him to continue his practice.
- A practitioner has become unfit to purchase, acquire, keep, use, administer, prescribe, order, supply, possess any ‘scheduled substances’ (i.e. substances included under the Medicines and Related Substances Control Act 101 of 1965).
- A practitioner has used, possessed, prescribed, administered or supplied any ‘scheduled substance’ for other than for medicinal purposes.
- A practitioner has become addicted to the use of a ‘scheduled substance.’”

Cases presented to the HPCSA are first forwarded to its relevant Professional Board. Then, in the case of doctors, the **Medical and Dental Board’s disciplinary committee** has the function of investigating enquiries (including the calling of witnesses), and importantly deciding if a case meets the HPCSA’s criterion of

“disgraceful or improper” conduct, making a finding, and recommending (or not) a penalty to the HPCSA’s Council. In addition, dependent on the case, it may independently impose certain penalties on its own. The practitioner in question has the right to answer the charge(s), to be heard in his or her own defence or have a legal representative answer the charges for him or her. In addition, an appeal of the verdict may however, take the proceedings of the HPCSA on review to the Supreme Court by virtue of the common-law powers of review of that court.

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Dr. B: So, it is somewhat of a mistake to have much of the media reviews directed at medical associations since they do not have the final powers of discipline such as to be written off the register. By mis-directing the question, the issues only become confused. Shouldn’t the medical associations be doing something different?

Dr. A: I think that medical associations should clearly state their role(s) in the medical community. They can say that, for example, their associations have ethical and disciplinary rules / guidelines that they expect to be followed and if this is not the

case, then they will expel their breaching member. However, to assume a role as the **disciplinary body** even though unintentionally does mislead the public. To dispel alleged ‘professional protectionism’ also ethically requires that medical associations be very clear on their roles and responsibilities within the health care system. It would be appropriate for the medical associations to encourage complaints against medical practitioners to be lodged with the HPCSA for action.

Dr. B: That’s something to think about.

Dr. A: That’s the idea.

Donna Knapp van Bogaert MA, MBA, M. Phil Applied Ethics (Biomedical & Business) (Stell)
Department of Anat. Path, Medical University of Southern Africa (MEDUNSA), Pretoria

Gboyega A Ogunbanjo MBBS, MFGP (SA), M Fam Med (MEDUNSA)
Department of Family Medicine and Primary Health Care, Medical University of Southern Africa (MEDUNSA), Pretoria