



What is it about Dispensing?

A heated debate is raging about the right of medical practitioners to dispense medicines. Recent regulations introduced by the department of health (DoH) require doctors to first undergo a newly introduced "dispensing course" and then to apply to the DoH for a license to dispense medicines to their own patients. This license will be granted at the discretion of the head of the DoH. The granting of the license will not merely depend on the applicant's knowledge and skills in the field of dispensing, but the distance from the nearest pharmacy will also be taken into consideration.

The official motivation by the DoH for introducing these new regulations is the desire to end dispensing irregularities by doctors. Dispensing of medicines to their patients has always been part of the scope of practice of the medical profession. Their professional actions, including their dispensing practices, are currently regulated by the Health Professions Council of South Africa (HPCSA). Doctors have to register with the HPCSA as dispensing practitioners. Clearly the DoH is not of the opinion that the HPCSA is doing a good job on this issue. There is however a strong suspicion that lobbying by pharmacists to end dispensing by doctors also played a major role in the decision to introduce these new regulations.

The National Convention on Dispensing (NCD), which represents over 8000 dispensing doctors in the country, has taken the DoH to court on Monday 31 May 2004 as it believes many doctors would suddenly be unable to dispense if they practice within a certain distance from a pharmacy. The court postponed the implementation date on the licensing regulations to 2 July 2004 pending judgment on a constitutional challenge against the regulations.

The NCD has been perturbed by the fact that by June 2, more than 8000 doctors would not have been able to dispense as the department had by then issued less than 500 licenses. The stumbling block in the processing of the licenses has been the insistence on the part of the department that licenses can only be issued to doctors who have completed the dispensing course. Less than 600 of the more than 6000 doctors registered to do the course have actually managed to complete the course. Failure to get

licenses by more than 8000 doctors would mean that doctors would not be able to claim from medical aids for medication dispensed by them, and that doctors will be restricted from purchasing medicines from medicine suppliers.

The NCD is very concerned that this state of affairs will see many patients, about a million per week, who depend on dispensing doctors, stranded. Of particular concern is the effect this will have on pensioners, the unemployed and all who do not have medical aid cover, as it will not be affordable for them to pay for a consultation and then pay separately for medication. This group of patients in particular will find it difficult to access doctors in private practice. Many doctors in private practice who were providing life sustaining medication such as antiretrovirals will have to turn their patients away as they may not be allowed to continue to provide such medication.

The NCD made several presentations to the DoH regarding dispensing since 1996, but they were unfortunately all ignored. The NCD is left with no alternative but to go challenge the constitutionality of the legislation as well as irregularities in the regulations. The NCD hopes the DoH understands the predicament which will be faced by doctors and patients in general.

In the court challenge Advocate Hans Fabricius senior counsel for the NCD, contended that the Health Minister acted beyond her powers when she decided that doctors needed special licenses to dispense medicine. Fabricius said "The minister assumed powers she didn't have." Some of the regulations were not provided for in law Fabricius said. This apparently related to issues of competition arising from a dispensing doctor being near a pharmacy. Such restrictions infringed on the basic rights of patients and doctors. Most of the provisions in the regulations were also challenged. Judgment was reserved and will be delivered on July 2. In the meantime the NCD advises doctors to apply for licenses as it is uncertain what the final verdict of the court will be.

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