



HPCSA: A mess in the Health Department's pocket

To the Editor: Normally I would have spared myself the effort and energy to react to the logically unsound, factually incorrect and bizarre editorial comment or article by J P de V van Niekerk,¹ Managing Editor of the *South African Medical Journal*, lest the true saying that arguing with unsound propositions might drag one to the pitiful valley of unsoundness and make people not to notice the difference, ring true in this context. I am however compelled both by my official position as Registrar of the so-called 'mess in the Health Department's Pocket (HPCSA)' and in personal capacity to set the record straight for the sake of truth loving South Africans and members of the health professions.

Dr Van Niekerk starts off well by articulating the history of regulation in South Africa and concludes that it was an honour to serve in the then South African Medical and Dental Council (SAMDC). However, Dr Van Niekerk is ironically very quick to outline the ills perpetrated by the then SAMDC such as its lack of sensitivity towards transformation evidenced by its grossly skewed demographic composition and its unquestionable political bias in (mis)handling the Steve Biko affair. One wonders therefore what was considered honourable in serving a body with such a poor track record!

Dr Van Niekerk submits that the latest version of the HPCSA is much more politicized than it ever was in the past. He further makes very wild, libelous and unsubstantiated allegations suggesting that the 'process of obtaining complete control by the Department of Health (DoH) was driven by the ideology of the government....' This bizarre conclusion is not borne out by fact nor supported by any evidence of politicization that Dr Van Niekerk alleges. Firstly, I am not aware that government has an ideology of taking complete control of institutions such as the HPCSA and perhaps, Dr Van Niekerk could help us by referring us to such a government policy.

Secondly, the concept of complete control of the HPCSA by DoH is, at best, the uninformed imagination of Dr Van Niekerk and at worst a complete lack of understanding of legislative and transformative processes as they play out between government and statutory structures such as the HPCSA.

It is important to note that any legislative amendment including development of Regulations is largely autochthonous to the HPCSA and to a large degree informs the final policy proposition by the DoH. Typically therefore, a structure such as the HPCSA would either make its original submissions on the policy propositions which would inform the DoH's position on the matter or consider policy propositions emanating from the DoH and make its decision thereon before same is adopted as legislation or Regulations. In this instance, the HPCSA was informed by the conclusions reached by a joint Task Team consisting of representatives from the major Statutory Health Professions Councils appointed by the then Minister of

Health. The HPCSA was satisfied with the recommendations that emanated from this Task Team, which recommendations became the bedrock upon which the legislative amendments that Dr Van Niekerk is complaining about were based. The DoH can therefore not be accused of wanting to take political control of the HPCSA as the examples used as 'evidence' for the mooted 'political control' do not lend themselves to any political control, a point I will address later.

Although the Medical and Dental Professions Board protested against some of the amendments in the legislation, the HPCSA of which the Medical and Dental Professions Board is part, carefully considered their protestations and ruled them to be without any basis. The HPCSA does not consist of the Medical and Dental Professions Board only but consists of many other health professions who are as significant in maintaining our health system in this country as are the medical doctors and dentists.

The overwhelming majority of the HPCSA members including certain members of the Medical and Dental Professions, supported the mooted legislative changes. These changes were not imposed on the HPCSA by the DoH.

Dr Van Niekerk alludes to the concerns of the '**vast majority of the medical practitioners in South Africa**' [my emphasis]. There is however no indication as to how these views were obtained and how Dr Van Niekerk concludes that it is indeed the majority of medical practitioners. In the absence of such empirical data, this allegation will therefore remain an undue exaggeration of Dr Van Niekerk's own imaginations.

Dr Van Niekerk suggests that the values of democracy will be eroded as there will not be a single member directly elected by the practitioners themselves. Whilst it is true that the new system will not allow for a direct election, it is nevertheless not accurate to conclude that democracy will be eroded thereby. Practitioners will continue to play an active role in the process by nominating persons they believe should serve in the HPCSA and the Minister of Health, is by law, confined to exercise her discretion of appointing suitable individuals from within the pool of those nominated by practitioners themselves. This can certainly not be dictatorship but a form of democracy that perhaps Dr Van Niekerk does not like but the fact that he does not like it does not make it something else other than democracy. Election is only one form of democracy and there are many other forms. Although Dr Van Niekerk concedes that this process will undoubtedly bring about excellent candidates, he nevertheless expresses concern that the appointment process might be an application of the ruling party's favoured policy of deployment of its ideological look-alikes so that it can control the HPCSA. Whilst I cannot speak for the ruling party, nevertheless I am a South African who knows at least that there are many examples where even the so-called deployees have made their decisions without fear, favour or prejudice because of the nature of the office they occupy.

A classical example is that of Judges, Public Protector, Human Rights Commission etc who have in many instances



issued rulings against the very ruling party that might have had a major influence in putting those individuals into those positions. This is because this country believes in the Rule of Law and adheres to the Constitutional canons of independence of the different levels of governance. This principle is even more pronounced in the context of the HPCSA mandate in that no government, no individual can seek or in fact impose a determination that the HPCSA ought to make as to whether an act or omission falls to be categorized as unethical or unprofessional. The determinations of what constitutes ethical and professional standards remains a sole prerogative of the HPCSA informed by the best practices in the industry as well as international benchmarks, norms and standards. The HPCSA is now a member of the International Association of Medical Regulatory Authorities (IAMRA) as well as a few other regional and international organizations which adhere to certain standards in determining appropriate ethical standards. It therefore cannot act against itself by compromising its independence and thus its integrity in the international world in which it has become a significant player.

More importantly, Dr Van Niekerk omits to advise the readership that the process of appointments by government is not something unique to the developing countries such as South Africa or something of the so-called 'dark-continent' but a practice not only in force in many developed countries and so-called civilized democracies of the world but also something that is being actively pursued in some of the world's established democracies. The General Medical Council of which Dr Van Niekerk speaks in tracing the roots of our own regulatory system is moving into a system of appointments not because of any form of control that governments want to introduce but because of the very fact that they want to ensure the independence of these structures not only from government but also from themselves.

A number of States in America and Commonwealth countries with established democracies use this model of appointments. I suppose lack of reference to these international models is an act of convenience on the part of Dr Van Niekerk.

The less said about the accusation that this process of legislative amendments was aided and abetted by Dr Nicky Padayachee (President) and Adv Boyce Mkhize (Registrar), the better! Dr Van Niekerk knows fully well that Dr Padayachee and myself cannot represent ourselves in Parliament but the HPCSA. There is no way that the President and Registrar could have gone to Parliament to represent anything other than the conclusions reached by the HPCSA and Dr Van Niekerk should know better than trying to personalize his attack by singling out certain players in this process who simply performed their duties.

Dr Van Niekerk also suggests that the institution of a system where lay chairpersons will chair conduct inquiries might cause difficulties in that the said members without medical knowledge will lack the ability to assess whether adverse

outcomes in patients are due to doctors seriously erring or the result of a variation of the disease. Dr Van Niekerk omits to mention that these inquiries are not run on the basis of a determination by the Chairperson. The Chairperson only pronounces the verdict which is collectively arrived at by the Committee. The Committee has people with medical expertise to advise on technical medical matters while the chairperson ensures that a fair and proper procedure is being followed.

Dr Van Niekerk further suggests that the combination of health professions under the HPCSA has proved detrimental to the medical and dental professions and he cites the examples of the impaired practitioner program and CPD which were 'compromised or severely delayed by trying to shoe-horn them into other ill-fitting professions'.

This comment is not only a denigration of the equally important health professions within the HPCSA by calling them 'ill-fitting' but also factually inaccurate in that the impaired practitioner program and CPD programs were neither compromised nor delayed as alleged. The HPCSA does not operate on a federal system where there is balkanization of structures into semi-independent entities but rather operates on a unitary model with some stratified autonomy within the confines of the greater good of its constituent parts. This model calls for a system where practices and procedures aimed at dealing with health professionals in general are applied generically across the professions whilst allowing for some profession specific variations. The Medical and Dental Professions Board has at no stage had the program of dealing with impaired practitioners compromised in any way or delayed. This program has continued uninterrupted with the same results that obtained before this was applied as a generic model across all the professions. Similarly, the CPD model was neither compromised nor delayed for the Medical and Dental Professions Board but has always been implemented even during the time of further adjustments and development of the program.

Dr Van Niekerk proceeds to make another wild allegation suggesting that practitioners of all the Boards have increasingly experienced a Council with symptoms of management failure as evidenced by decreased capacity to deliver, demotivated staff and dissipation of financial assets that were accrued over many years.

This wild allegation is not backed up by facts in that there is an attempt to make a comparison between that which is now and that which was before in terms of capacity to deliver. There is no indication as to what constitutes the quantification of a decrease of capacity to deliver in terms of what it was before and what it is now. There is also no reflection of the evidence to support the allegation of a demotivated staff. There is also no indication which financial assets were accrued before which have since dissipated and in what context and in what quantum.



These statements seem to be a foul cry lamenting what Dr Van Niekerk may have perceived or experienced as a glorious past in which he played an active part and the new order in which he has no active part to play and hence his conclusion that the HPCSA has become or is becoming a sorry mess. Dr Van Niekerk does not take the readership of his magazine into confidence by providing supporting evidence to his allegations and particularly how these allegations make the HPCSA susceptible to a 'take-over' by the Department of Health and consequently a 'sorry mess'.

I suppose that having read the factual story in this reply which addresses all of the unfounded allegations and misapprehension by Dr Van Niekerk, one sorry mess remains, and that is his uninformed allegations.

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1. Van Niekerk JP. HPCSA: A mess in the Health Department's pocket. *S Afr Med J* 2009; 99: 203.