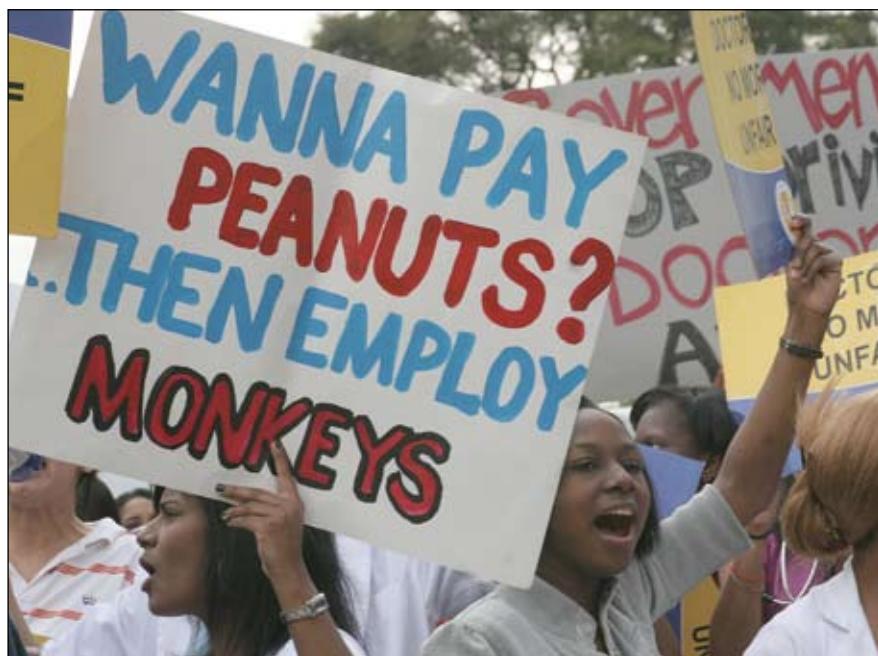




A LITTLE CARROT AND A BIG STICK – OSD BEDS DOWN



Striking doctors in Durban make their feelings known shortly before negotiations concluded.

Picture: Courtesy of The Natal Mercury.

Government and the Health Professions Council (HPCSA) fired punishing legal salvos at striking doctors on the eve of the 30 June Occupation Specific Dispensation, OSD, negotiation deadline – effectively telling them: 'Settle or potentially ruin your career'.

Hundreds of mainly juniors, this time not just predominantly United Doctors Forum (UDF) constituents¹ but a significant percentage of South African Medical Association (SAMA) members, downed stethoscopes across the country to signal disgust at the 24 June revised salary offer. That offer on average fell way below the demanded minimum 50% increase with a lower lump sum in lieu of the July 2008 back pay initially promised by the health ministry, yet SAMA hung in at the negotiating table until the final whistle.

A final flurry of early-morning negotiations just ahead of the 30 June deadline ended with junior doctors, previously virtually ignored, among the biggest potential winners.

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That is if SAMA, 91% of whose respondents rejected the overall package via an electronic poll, made a surprise last-minute turnaround before the 21 July acceptance deadline.

At the time of going to press SAMA had secured an 'agreement in principle' from Department of Public Service Minister Richard Baloyi enabling it to shoot for a majority-union special resolution allowing the re-opening of the bargaining chamber. This immediately led to heated wrangle between SAMA and the far more powerful National Education, Health and Allied Workers Union (Nehawu) which was in favour of settling.

Rejecting the offer means taking a fraught arbitration route where a positive ruling can be overturned in parliament, leaving doctors at the mercy of government ' largesse'. *Izindaba* sources warned that the employer first had to 'sign off' on agreeing to arbitration, something it only did for its wage offer.

Challenging the employer in the Constitutional Court, where the prospects of a win are shaky,² could take years and cost SAMA millions.

Interns were offered a 42% hike and Community Service Officers 8% from 1 July, with another 6.1% in April for Comserves. The category of first-year medical officers (previously level 9) was eliminated in 2007 and recalibrated to senior medical officer pay levels (level 10). These doctors were offered a 3.4% increase from 1 July with another 7.7% due in April 2010.

Collectively these 'juniors' form the bulk of public sector doctors due to the historical attrition of seniors who spent more time in a deteriorating work environment with inadequate resources and largely woeful management. They are the notable exceptions in a package which sees principal medical officers (level 11) and chief medical officers (level 12) get below inflation increases from 1 July this year (3.7% and 1.5% respectively), improving via a 7.7% and 9.3% 'top-up' in April 2010.

Commututed overtime

According to Dr Pophi Ramathuba, SAMA deputy chairperson of the public doctors committee, exhausted negotiators left the bargaining chamber still arguing about the employer including commuted overtime in their 'inflated' version of the increase.

The OSD hikes are also experience-related for each level, with additional percentage increases for 5 years but less than 10, and 10 years and above, enabling certain older hands who were 'stuck' in a level to benefit beyond the average top offer. The notoriously numerous 'notches' in each level were also shrunk with annual performance assessments agreed upon as mandatory in future.



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Ramathuba stressed that general health worker negotiations (non-OSD) were to immediately follow, potentially adding 'up to 10% or more' to doctors' packages.

But for the OSD furore, it was classic carrot-and-stick government strategy.

First KwaZulu-Natal's health department – with national approval – secured a labour court interdict against 226 striking doctors (27 June) and then fired most of them for not returning to work, followed by the Eastern Cape with an interdict against another 60.

KwaZulu-Natal set up an 'appeals committee' to hear the sacked doctors' cases, thus keeping alive the possibility of maintaining pre-existing patient service levels. Eventually, after Cosatu and SAMA intervention, the province reluctantly agreed to reinstate the legally vulnerable doctors. At the time of writing it could not be established if the Eastern Cape had copied the 'fire and possibly re-hire' tactic.

SAMA's labour relations unit in Pretoria was put to work appealing at least 150 KwaZulu-Natal dismissal notices on procedural and substantive grounds that ranged from doctors on leave being fired to sacked doctors having swapped 'on-call' duties or that they were actually working in another part of the hospital. One SAMA lawyer said hospital chiefs simply forwarded doctor duty registers to head office, which then summarily issued 'unfair' dismissal notices.

The HPCSA then waded in with two probes against striking doctors following 'complaints', the first involving 16 doctors from Addington Hospital's paediatrics department, for



allegedly 'refusing to attend to life-threatening emergencies'. The second involved 60 doctors across 6 hospitals in the Ethekwini District (Greater Durban) for alleged 'dereliction of duty'.

Advocate Boyce Mkhize, the HPCSA's Registrar, and national health minister Dr Aaron Motsoaledi, issued strongly worded statements, the former firing a belligerent legal salvo across the strikers' bows and the latter claiming to 'set the record straight'.

Responding to strikers having dared the government to fire them and face them going into private practice or emigrating, Mkhize 'advised' that he was 'obliged' to inform regulatory bodies world-wide once a complaint had been lodged against doctors. 'This has a huge bearing on whether the doctor is registered in that jurisdiction to which they may want to emigrate. Furthermore the HPCSA issues a certificate of status – a prerequisite for registering in another jurisdiction. Other regulatory bodies would not knowingly register doctors with issues of misconduct against them. Once doctors are deregistered or suspended they (also) cannot enter into private practice in South Africa,' he added.

'We warned you' – HPCSA

Citing the laws that prevent emergency service workers from striking (due to the absence of a minimum service level agreement), Mkhize added ominously that the doctors' failure to heed repeated HPCSA warnings not to strike could 'only serve as an aggravating factor during sentencing'.

He failed to mention the plethora of pre-conditions required before a formal enquiry can be launched. These include a complaint in writing to him with contact details of the complainant, a list of the doctors involved (including ID or practice numbers), the circumstance of the complaint, the name of the patients affected, how they were affected (to establish negligence or detriment). The

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'accused' doctor then has 40 working days to provide an explanation before a preliminary enquiry decides on whether grounds exist for a formal professional conduct enquiry.

Mkhize did however list the penalties for practitioners found guilty of improper or disgraceful conduct. These range from a caution or reprimand (or both), suspension from practising, a fine, a compulsory period of professional service, payment of the costs of proceedings or 'restitution', or both.

Motsoaledi took what he termed the 'extraordinary' step of publicly announcing the 24 June government offer while negotiations continued – and accused 'faceless individual doctors' of muddying the waters by misrepresenting it.

He took 'serious exception' to these 'inflammatory remarks and 'unacceptable' responses, in particular to a Wits Business School academic who said that 'doctors have been cheated because the figures do not add up'. He urged doctors to rather work with SAMA to 'get the true facts'.

'Do the comparisons' – Motsoaledi

Motsoaledi challenged doctors to approach various government

departments and probe salaries of various public sector workers from Assistant Director up to Director General and compare these with those proposed for doctors, from medical interns up to professors, 'and see who comes out tops'.

He again acknowledged that state doctors were badly paid but added: 'We are not prepared to throw the rule books out of the window and we cannot allow the striking doctors to do so'. Motsoaledi stressed that it was not the doctor unions that the government was interdicting.

SAMA's acting chairman, Dr Norman Mabasa, said government was 'ill-advised' to apply the law so rigidly 'when realities dictate otherwise'.

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'There are genuine problems which have created desperate situations and therefore anybody caught in that scenario needs to be handled with some sympathy – you cannot dismiss your own people when you have the common goal of saving lives. Government must deal with the cause of the problem and not what prevails. SAMA will help doctors facing legal action wherever we can, depending on the merits of each case,' he added.

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'It's about saving lives' – Mabasa

Of the HPCSA's 'wielding of the big stick,' Mabasa responded: 'This is a unique problem requiring a unique solution. It's not as easy as uttering statements and dismissing doctors. It's about saving lives.

The Rural Doctors Association of South Africa (Rudasa), in a letter to Motsoaledi and Finance Minister Pravin Gordhan, called the offer 'shocking', especially for seniors who provided vital support and supervision in rural areas. 'With a 34% vacancy rate in the public service nationally and well over 50% vacancy rates for doctors in virtually all rural areas, this offer shows no insight into how difficult it is to recruit doctors to work in rural areas nor what we actually do and under what circumstances we are expected to function.'

Rudasa said the offer undermined the health care system where the majority of patients were seen and posed a danger to doctor recruitment, placing the district health system in danger of collapse.

Chris Bateman

1. Bateman C. *S Afr Med J* 2009; 99: 416-422.
2. Bateman C. *S Afr Med J* 2009; 99: 497.