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A PRELIMINARY INVESTIGATIVE SYSTEM TO
PROFESSIONAL CONDUCT COMMITTEES OF THE HEALTH
PROFESSIONS COUNCIL OF SOUTH AFRICA, WITH SPECIFIC
REFERENCE TO MAXILLO-FACIAL AND ORAL SURGERY

by

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to

Annelie,

Estee, Erik & Alicia

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“...The appointment of the new president of the HPCSA brings with it the promise of additional persecution of medical practitioners. A recent interview with the new HPCSA president was printed in a local newspaper and makes for frightening reading. One hundred legal firms have been engaged to ensure that those doctors who have complaints lodged against them will be expeditiously ‘tried, judged and executed’. And if found guilty, the penalties will be increased.

To quote,

“They, the doctors are now going to pay R5 million for their legal fees. And we are going to strike them off the roll, or suspend them. Previously they dragged cases out while they continued to practise and make fortunes”.

The interview continues to further exalt this great manifestation of wisdom, understanding and compassion:

“The majority, on panels investigating allegations of misdemeanours by doctors, will be community representatives, and they are going to be chaired by people who are not doctors”.

- AM Levin -

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SAMEVATTING

‘n VOORLOPIGE ONDERSOEKSISTEEM NA PROFESSIONELE
GEDRAGSKOMITEES VAN DIE RAAD VAN GESONDHEIDSBEROEPE VAN
SUID AFRIKA, MET SPESIFIEKE VERWYSING NA
KAAK-, GESIG- EN MONDCHIRURGIE

deur

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GRAAD: PhD

Die doel van hierdie studie is om die effektiwiteit van die komitee van voorlopige ondersoek (in die konteks van professionele gedragskomitees) van die Raad van Gesondheidsberoepe van Suid Afrika te evalueer, met spesifieke verwysing na kaak-, gesig- en mondchirurgie. ‘n Evaluasie is gedoen van sake wat deur die komitee van voorlopige ondersoek verwys is na hierdie spesifieke professionele gedragsondersoek komitee van die Mediese en Tandheelkundige Beroepsraad. Waar aangedui, is hierdie ondersoek uitgebrei en aangevul uit ander relevante professionele gedragskomitees.

Ten einde hierdie doel te verwesenlik, is 'n breedvoerige literatuurstudie gedoen oor die breë konsep van geneeskundige en tandheelkundige wanpraktyk en nalatigheid. Spesifieke aandag is geskenk aan die beginsels van deskundige getuienis en toestemming tot operasies. 'n Verdere studie is gemaak van die normale regsbeginsele waarbinne hierdie ondersoek-komitees behoort te funksioneer. In die gevalle waar dissiplinêre ondersoekes gevolg het op die optrede van praktisyns, is 'n omvattende ontleding van die sogenaamde regsproses en daaropvolgende bevindinge (in die konteks van die professionele gedragskomitees) gemaak.

Die resultate van hierdie studie dui daarop dat daar tekortkominge is, veral in die meer komplekse gevalle, in die ondersoekprosedures van die komitee van voorlopige ondersoek wat dissiplinêre ondersoekes van die Raad van Gesondheidsberoepes voorafgegaan het. Die volgende aanbevelings is gemaak (in volgorde van belangrikheid):

1. Beide die komitee van voorlopige ondersoek en professionele gedragskomitee moet aan die normale juridiese reëls van natuurlike geregtigheid voldoen, soos vervat in die Grondwet van die Republiek van Suid-Afrika.
2. 'n Forum van deskundige getuies moet gestig word om alle gevalle van beweerde onprofessionele gedrag en nalatigheid met betrekking tot die vakgebied van kaak-, gesig- en mondchirurgie wat deur die Ombudsman ondersoek en verwys is, te evalueer.

3. 'n Kaak- gesig- en mondchirurgiese Ombudsman moet aangestel word om alle relevante gevalle wat voor die PRELIM gebring word, te evalueer.
4. Die sogenaamde '*redelike persoon*' toets, gesubjektiveer tot die '*redelike spesialis*', moet as standaard dien vir evaluasie van beweerde gevalle van nalatigheid in die vakgebied van Kaak-, Gesig- en Mondchirurgie.
5. Die voorgestelde pasiënt toestemmingsvorm dien as voorbeeld vir die verkryging van ingeligte toestemming. Dit is voor die handliggend dat die normale juridiese voorskrifte, veral met betrekking tot uitbreiding en afwyking tydens operatiewe ingrepe, nagekom moet word.
6. Lidmaatskap van organisasies wat aspekte van vrywaring en skadevergoeding hanteer (soos die Medical/Dental Protection Society) word aanbeveel ten einde enige aanklagte van onprofessionele/skandalige gedrag korrek te hanteer..

Die aanbeveling het dit ten doel om 'n voorlopige ondersoekstelsel daar te stel wat meer vaartbelyn, koste- en tydseffektief is om klagtes van onprofessionele gedrag te ondersoek en te evalueer vir moontlike dissiplinêre optrede.

SUMMARY

A PRELIMINARY INVESTIGATIVE SYSTEM TO
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The purpose of this study was to evaluate the effectiveness of the committee of preliminary inquiry (in the context of professional conduct committees) of the Health Professions Council of South Africa, with specific reference to maxillo-facial and oral surgery. An evaluation was done of cases that were referred by the committee for preliminary inquiry to this specific professional conduct committee of the Medical and Dental Professions Board. Where necessary, these cases were supplemented by relevant cases from other professional conduct committees.

In order to achieve this goal, a comprehensive literature study was conducted on the broad concept of medical and dental misconduct and negligence. Specific attention was paid to the issues of expert testimony and witnesses and consent. Furthermore, a study was conducted to determine the legal framework in which these committees are supposed to function. In the cases where inquiries into the complaints against the registered practitioners followed, a detailed evaluation of the so-called legal process was done, as well as the findings in each case (in the context of the professional conduct committees).

The results of this study have shown that the investigative system of the committee for preliminary inquiry preceding professional conduct inquiries into complaints against registered practitioners has certain shortcomings, especially in the more complex cases. The following proposals have been made (in order of most importance):

1. Both the committee for preliminary inquiry and professional conduct committee must abide by the rules of natural justice, as pertained in the Constitution of the Republic of South Africa.
2. Establishment of a Forum of Expert Witnesses that will evaluate all cases of alleged professional misconduct and negligence pertaining to the field of maxillo-facial and oral surgery, after it was evaluated and referred by the Ombudsman.
3. Appointment of a maxillo-facial and oral surgeon as Ombudsman to evaluate all cases brought before the committee for preliminary inquiry pertaining to the field of maxillo-facial and oral surgery.

4. Acceptance of the proposed test of medical negligence, i.e. the '*reasonable person's* test', subjected to that of the '*reasonable specialist*' as standard for evaluation of cases of alleged negligence in maxillo-facial and oral surgery.
5. The proposed patient's consent form serves as an example of a legitimate patient consent form. It follows that the legal requirements, especially in cases of extensions and deviations of medical interventions, must be adhered to.
6. It is advisable to belong to an organisation providing indemnity cover (such as Medical/Dental Protection Society) in order to receive proper assistance in the handling of these cases of alleged unprofessional/disgraceful conduct.

The recommendations consequential to this study would provide a more streamlined, cost- and time effective investigative system to investigate claims of unprofessional conduct for possible further disciplinary action.