

Healthcare system burdened by unfounded cases of medical malpractice

There are growing concerns that patient care and doctor wellbeing are being undermined by the high number of ill-considered and unfounded cases brought against medical practitioners in South Africa.



Source: [Pexels](#)

Statistics reveal that of the complaints brought against healthcare professionals in South Africa just 9% were referred, by the Health Professions Council of South Africa (HPCSA), to an inquiry before a profession conduct committee. The stats from the HPCSA's 2022/2023 annual report refer to complaints which were considered by the committees of the Preliminary Inquiry of the Medical and Dental Professions Board.

In the build-up to National Doctors' Day, on 16 November, a leading professional indemnity provider of surgical specialists, EthiQal, is highlighting the impact that poorly considered allegations have on the healthcare sector.

Hombe Makuluma, clinical risk management specialist at EthiQal believes it is patients, in an already burdened system, who end up paying the price of hasty and unjustified legal recourse against healthcare professionals. Last year the Minister of Health, Joe Phaahla, revealed that South Africa's doctor to patient ratio was only at 0.31 doctors per 1,000 patients.

He explains, "Following unfounded allegations some doctors stop practising altogether or reduce their scope of practice, given fear of future litigation, further exacerbating South Africa's critical doctor shortage. Others become defensive in their

practice and push up healthcare costs unnecessarily by performing tests aimed at mitigating their medico-legal risks. This is costly and can be based more on mitigating their own risk, rather than on what they feel their patient requires.”

The threat of aggrieved patients reporting doctors to the HPCSA, or demanding compensation or, in the worst cases, laying criminal charges against them can take a massive toll on the mental wellbeing of healthcare professionals.

A call to avoid hasty legal action

“A condition known as medical malpractice stress syndrome (MMSS) has been recognised as affecting medical professionals who are subjected to litigation. This disorder, which includes severe anxiety and depression and physiological changes relating to immune and endocrine functions, speaks to the often profoundly negative impact that unfounded allegations can have on doctors,” explains Makuluma.



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South Africans are urged to openly discuss their grievances with their treating doctor before reporting the practitioner or taking legal action. Head of claims and legal at EthiQal, JP Ellis says, “Legal action should be a last resort, pursued only after all other channels of communication and conflict resolution have been thoroughly explored.

“It’s essential to recognise that litigation is not only costly but also time-consuming, intricate, and emotionally draining for both parties involved. By fostering open dialogue and understanding between patients and healthcare professionals, we can mitigate unnecessary legal proceedings and uphold the integrity of our healthcare system.”

Addressing regulatory challenges

Other than the undue stress it causes to both the patient and doctor involved, unwarranted legal action creates unnecessary bottlenecks within the regulatory processes, potentially slowing down the review of deserving cases. While the HPCSA has acknowledged the delays and inefficiencies within its processes, it is actively dedicated to making significant improvements.

Ellis adds, “Medical care cannot guarantee perfect outcomes and it is important to understand that medical care inherently involves certain risks. It is essential to recognise that less-than-ideal outcomes or unexpected complications do not automatically indicate negligence.

“Our courts have cautioned against the natural human inclination to attribute blame to someone when an innocent party is injured. This underscores the importance of distinguishing between adverse outcomes and genuine negligence.”

Makuluma concludes, “Doctors’ Day on 16 November is an opportunity for South Africans to recognise the growing challenges that face South African doctors. It is also an opportunity for each of us, as patients, to foster open and direct communication with our doctors to safeguard a robust healthcare system in our country.”