



Ethical misconduct of HPCSA registered Occupational Therapists in South Africa

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ABSTRACT

In South Africa, the health care professions are regulated by statutory bodies which are organs of the state and can enforce laws such as the Health Professions Act. The Health Professions Act provides the parameters within which the Health Professions Council of South Africa (HPCSA) can sanction members if they are in contravention of its regulations. During the period under analysis i.e. between 2007 and 2013, only three penalties were imposed against two occupational therapy practitioners. Although the number of penalties can be viewed as insignificant the value of the research is in the fact that cognisance needs to be taken by the profession of the relevant ethical issues in these cases.

It is recommended that occupational therapists should always inform their clients appropriately and should also form informal mentoring groups.

Keywords: ethical transgressions, fraud, ethical standards

INTRODUCTION

In South Africa, the health care professions are regulated by statutory bodies, such as the South African Nursing Council and the Health Professions Council of South Africa (HPCSA). Registration with the regulatory bodies is mandatory and it is a criminal offence to practise a regulated profession without a current registration, as it is a contravention of the Health Professions Act 56/1974 (HPA)¹ and other relevant legislation. The HPA provides the parameters within which the HPCSA must act in its regulation of the health care professions and among other functions, enables the HPCSA to sanction the contravention of its regulations. In addition, the health professionals could join non-statutory professional bodies, such as the Occupational Therapy Association of South Africa (OTASA), of which membership is voluntary.

When a patient, client, family member, care provider or colleague holds the opinion that an occupational therapist's behaviour has had a negative impact on him or her, the person has the right to lodge a complaint of unethical behaviour with the HPCSA against the particular occupational therapist. Once a complaint has been received by the HPCSA, the Legal Services Department, on behalf of the Registrar, will send a formal letter to the person against whom the complaint has been lodged to notify him or her that a complaint was lodged, and that an explanation is required. The accused practitioner's explanation is reviewed by the Legal Services Department and considered by the Professional Board's Preliminary Enquiry Committee. The preliminary enquiry committee can make decisions on minor transgressions such as issues pertaining to advertising. If the committee decides that the matter is serious, it is referred for a full enquiry, to be heard by the professional conduct committee, which should have some representation from the profession of the accused. If the accused practitioner disagrees with a guilty finding from the Preliminary Enquiry Committee, he/she can request that it be referred to a full enquiry. Should the accused be found guilty of misconduct a number of potential penalties can be imposed, for

example a reprimand, fine, suspension or even removal from the register. The HPCSA cannot however, institute criminal sanctions (i.e. imprisonment) against a guilty party^{2,3,4}. See *Figure 1* for the HPCSA disciplinary process.

Legal, ethical and liability concerns are disconcerting in health-care professions at large, but also for the occupational therapy profession. The possibility of a complaint being lodged against a practitioner is an increasing risk for most healthcare practitioners as the South African population becomes more aware of its rights and are influenced by the media which provides greater accessibility of information on disorders/diagnoses.

The objectives of this article are the following:

- ❖ To examine the content of all guilty verdicts related to professional standard breaches and ethical misconduct against HPCSA-registered occupational therapists in the period 2007 to 2013. Although cognisance should be taken that the preliminary committee has had two different chairpersons during this time, the data are presented in one cohort as historically significant since the functioning of the committees was guided by the same standards.
- ❖ To examine the penalty content of all guilty verdicts related to professional standard breaches and ethical misconduct against HPCSA-registered occupational therapists in the period 2007 to 2013; and
- ❖ To recommend potential intervention strategies.

METHODOLOGY

Research Design

The study is primarily a descriptive study while it specifically focuses on a historical research approach, using archival material (e.g. documents and records) as the primary data source⁵. In this study the *archive* was the publicly accessible information pertaining to complaints, alleged misconduct and outcomes of formal hearings as published on the official website of the HPCSA⁶.



Data Gathering Process

Since 2007 the HPCSA has published an annual list of all the guilty verdicts related to professional standard breaches and ethics misconduct against registered health practitioners under its jurisdiction. These annual lists are published in the public domain on the official HPCSA website⁶. These lists contain the name and registration number (as well as category) of the guilty practitioner, a summary of the misconduct, a summary of the penalty, as well as the geographical area.

Data Analysis

Only data pertaining to healthcare professionals registered as Occupational Therapists in the HPCSA's Professional Board for Occupational Therapy, Medical Orthotics and Prosthetics and Arts Therapy were analysed in this study. In the first phase of data analysis, annual frequency tables were compiled for the following variable combinations: 1) total number of guilty occupational therapists; and 2) total number of specific penalty types imposed between 2007 and 2013.

Ethics Approval

Research projects that exclusively focus on the analysis of publicly available documents are generally exempt from the requirement for ethics clearance from a registered research ethics committee.⁷ As such, no formal ethics clearance was sought for this project. Note that even though the identities and HPCSA registration numbers of the sanctioned health professionals are provided in the HPCSA annual lists of guilty verdicts, they are already within the public domain, they are however deemed to be irrelevant to the project objectives. As a result the data are reported anonymously and the identifying information not given.

RESULTS

The total number and overall relative percentage of the different penalties imposed to guilty occupational therapists in South Africa in the period 2007 to 2013 is very low with only three penalties imposed against two practitioners in the reported time. Although these penalties can be viewed as insignificant, given the average registered number of professionals (3,480) between 2003 and 2013, the value of the research lies in the fact that cognisance needs to be taken by the profession of the relevant ethical issues in these cases. The fact that the data only refer to guilty verdicts do not suggest that these were the only complaints received from the public.

Penalties imposed to guilty practitioners

The different penalties imposed to guilty occupational therapists⁶ in the period 2007 to 2013 were the following:

Table 1: Penalties imposed against ethical misconduct in specific year

Penalties	Nature of transgression	Year
Fine of R7,000	Submitted report without assessing patient	2008
Six month suspended suspension (where the practitioner may not be found guilty of a similar transgression within the time)	Fraudulently submitted a report to a Financial Services company, whilst knowing and/or ought to have known that it was not compiled by the transgressor	2008
Reimbursement to complainant	Fraudulently submitted a report to a Financial Services company, whilst knowing and/or ought to have known that it was not compiled by the guilty practitioner	2008

Transgressions committed by guilty practitioners

The transgressions can be classified in general terms as unprofessional conduct, where the cases involved the submission of a medico-legal report without actually assessing the patient and the compilation of a fraudulent financial report. According to the data the only ethical misconducts which were penalised in the period 2007 – 2013 took place during 2008.

DISCUSSION

The findings of the current study indicate that only a small fraction of the occupational therapists registered with the HPCSA have been found guilty of ethical misconduct, with 2008 being the only year with reported misconducts (Table 1). One possible reason could be that the preliminary committee mediated effectively between the professional and the members of the public who submitted the complaint.

In this study, unprofessional conduct was characterised by the following two areas: submitting a report without assessing the patient; and fraudulently submitting a statement to a financial services company (i.e. medical aid). As a healthcare professional one is held in a position of trust by the public as well as fellow health care professionals. Not honouring the trust put in one's professional capacity and integrity could negatively impact the therapeutic relationship. The latter constitutes a direct form of disrespect for patient dignity. Exhibiting respect for patients' inherent human worth (dignity) is one of the main responsibilities of health professionals in South Africa. Also, it is universally regarded as a principle of bioethics and human rights; for example Article 2(c) and Article 3(1) of the Universal Declaration on Bioethics and Human Rights⁸, and in keeping with the stipulations of the Constitution of the Republic of South Africa 108/1996 on Human dignity [S10]; Privacy [S14(d)]; Health care [S27].

In South Africa the rules for good practice in the healthcare professions are described in the *Ethical and professional rules of the Health Professions Council of South Africa as promulgated in Government Gazette R717/2006*.² This document provides the general ethical rules of conduct for all practitioners registered under the Health Professions Act¹; it is referred to as the *General Ethical Rules*. A companion document published by the HPCSA⁹, namely the *General Ethical Guidelines for Health Care Professions* essentially provides the Code of Ethics that all practitioners should subscribe to. OTASA¹⁰ also has a very helpful set of guidelines namely the *Code of Ethics and Professional Conduct* which by implication members of the association subscribe to.

CONCLUSIONS AND RECOMMENDATIONS

Although only a small fraction of occupational therapists have been found guilty of ethical misconduct the influence of the media (internet, social, talk shows and printed) and electronic advances (connectivity to information via cell phones and tablets), along with on-line diagnosis and therapy¹¹, cannot be negated as clients may have better access to resources of varying authority and reliability, possibly giving them more confidence to question the practices of their service providers. Occupational therapists need to appropriately inform clients with relevant and reliable information whilst respecting their clients' opinions in an ethical manner.

Registered professionals should firstly acquaint themselves with the HPCSA guidelines to ethical conduct, but also join/establish a regular discussion group reflecting on ethical issues which might occur. These informal groups often act as a sounding board where more established professionals can guide/mentor less experienced colleagues in a safe environment and where relevant experiences can be shared. These groups can furthermore also invite subject experts if they find some members of the group have common problems.

In conclusion, the Health Professions Act¹ (Rule 21) does not require from registered professionals to practise perfectly; rather,



it requires from them to have the knowledge and skill comparable to others registered in the same category and to act reasonably in accordance with the established standards.

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