



***HEALTH PROFESSIONS COUNCIL OF SOUTH
AFRICA***

REPORT

**A NATIONAL STRATEGY FOR MANAGING IMPAIRMENT IN
STUDENTS AND PRACTITIONERS REGISTERED WITH
COUNCIL**

COMPILED BY THE

**WORKGROUP ON IMPAIRMENT IN STUDENTS AND
PRACTITIONERS OF MEDICINE AND DENTISTRY**

**PRETORIA
15 OCTOBER 1996**

TABLE OF CONTENTS

1 BACKGROUND INFORMATION

- A. On 30 January 1995, the SAMDC arranged a Conference under the title: *Towards a National Strategy for Managing Impairment in Students and Practitioners of Medicine and Dentistry*. The full Report of that Conference was widely distributed by Council on 30 June 1995.
- B. During the Conference, it was suggested that consideration be given to setting up a Workgroup to -
- B.1 review the *Conference Report*,
- B.2 follow-up the various conclusions, proposals and recommendations made during the Conference.
- This suggestion was approved by Conference.
- C. In view of the then to be established Interim National Medical and Dental Council of South Africa, this matter was held back until after the new Council had been established in September 1995.
- D. The Report and recommendation were then submitted to the President who, on 2 November 1995, agreed to the setting up of the Workgroup and the appointment of its members.
- E. In December 1995 Council RESOLVED that -
- E.1 it be noted that -
- E.1.1 a "Conference on Impaired Students and Practitioners" was held by the SAMDC on 30 January 1995;
- E.1.2 each member of the Interim Council had been provided with a copy of the conference report entitled: *Towards a National Strategy for Managing Impairment in Students and Practitioners of Medicine and Dentistry*;
- E.2 the decision of the President on 2 November 1995 to approve the establishment of a Workgroup to consider the report and to submit recommendations to Council on the future management of impairment in students and practitioners, be confirmed.

2 COMPOSITION OF THE WORKGROUP

- 2.1 After consultation with the President of the Interim National Medical and Dental Council and various professional bodies, the following persons were appointed to the Workgroup:
- 2.1.1 Prof S Kallichurum: President: Interim National Medical and Dental Council of South Africa.
- 2.1.2 Dr L H Becker (Chairman): Dentist and former President of the South African Medical and Dental Council.
- 2.1.3 Prof E Bertelsmann SC: Practising Advocate, Chairman: Pretoria Bar Council; and Department of Criminal and Process Law, University of South Africa.

- 2.1.4 Prof B Kramer: Department of Anatomy, University of the Witwatersrand and Representative: Dental Association of South Africa (represented on 23 May by Dr B George).
- 2.1.5 Mr B Mohlala: Medical student and Representative: Medical Students' Association.
- 2.1.6 Prof D F Morrell: Department of Anaesthesiology, University of the Witwatersrand and Representative: South African Society of Anaesthesiologists.
- 2.1.7 Dr A Ntsaluba: Deputy Director-General, Department of Health (represented on 23 May by Dr S J V Hendricks; Director: Human Resources).
- 2.1.8 Dr S V Potgieter: Representative: Medical Association of South Africa.
- 2.1.9 Prof B L W Sparks: Department of Family Medicine, University of the Witwatersrand and Representative: National General Practitioners Group of the Medical Association of South Africa.
- 2.1.10 Prof T Zabow: Department of Psychiatry, University of Cape Town and Representative: Committee of Medical Deans and the South African Psychiatric Association.

The Workgroup met on 29 February and 23 May 1996.

3 TIMEFRAME

The Workgroup dealt with this matter in such a fashion as to -

- 3.1 submit its final report to the Executive Committee of Council in September 1996 with a view to Council's meeting in October 1996;
- 3.2 submit its recommendations on amendments to the existing legislation to the Legislative Review Committee in July 1996 for inclusion in the proposals for amendments to the Act which were submitted to Council at its special meeting in July 1996.

The Workgroup's Report served before Council on 15 October 1996 and the recommendations contained therein were agreed to as set out herein.

4 FUTURE FRAMEWORK FOR MANAGING STUDENTS AND PRACTITIONERS WHO ARE IMPAIRED

- 4.1 RESOLVED that the following framework for managing students and practitioners who are impaired be approved and that the *Medical, Dental and Supplementary Health Services Professions Act, 1974* (Act No. 56 of 1974), be appropriately amended to -
- 4.1.1 state clearly that Council had a dual responsibility, namely to -
- a. promote, safeguard and protect the interests of patients, amongst others, in view of the fact that such interests may be endangered by the actions or lack thereof on the part of impaired students and practitioners;
 - b. promote and manage a system for the prevention, early identification, treatment and rehabilitation of impaired students and practitioners;
- 4.1.2 specifically define the expression "impairment" in section 1 of the Act;

- 4.1.3 set up a separate Chapter in the Act which provides for a system to adequately deal with health matters pertaining to persons registered with Council, to assess and investigate alleged impairment, and to manage and deal with impairment in students and practitioners;
- 4.1.4 set up in Council a specific non-punitive structure under the direction of an expert Health Committee to undertake those steps necessary to promote health and, where possible, prevent impairment in students and practitioners, to assess and investigate alleged impairment, and to manage and deal with those registered persons who are impaired;
- 4.1.5 clearly distinguish between -
- a. offenses of an improper or disgraceful nature committed by registered persons and disciplinary procedures for dealing with such alleged improper or disgraceful conduct; and
 - b. impairment on the part of registered persons and procedures for dealing with impaired students and practitioners registered with Council;
- 4.1.6 provide that -
- a. persons who allegedly committed improper or disgraceful conduct, but who prove to be impaired, could at any stage during disciplinary procedures be referred by a disciplinary committee for further investigation and management under the provisions for impaired persons; or
 - b. alleged impaired persons who prove to have committed improper or disgraceful conduct, equally could be referred for an inquiry under the disciplinary procedures if their conduct proved to warrant such referral;
- 4.1.7 provide that the proposed health procedures of the Act equally apply to all persons registered with Council, be they students, interns or fully-fledged practitioners;
- 4.1.8 in the case of students, provide further for -
- a. protection of impaired students who wish to obtain help for themselves from discrimination against them as a result of their exposure of such impairment;
 - b. suspension by Council, after due procedures, from continuing to register as a student in terms of the Act on ground of impairment, if it were to be found that it was not in the public interest for such student to continue with training for his or her profession; and
 - c. the proposed procedures for managing impairment in students to be clarified specifically with training institutions with regard to matters such as reporting to Council, ongoing supervision and treatment, as well as involvement of training institutions at Council level in the managing of impaired students who are enrolled at specific training institutions;
- 4.1.9 revise subsections (2) to (7) of section 51 fully and where necessary, replace them by provisions to provide for the implementation of the system for managing impairment as recommended in this Report.
- 4.2 FURTHER RESOLVED that -

- 4.2.1 the proposed Chapter in the Act for dealing with health matters be equally applicable to students and practitioners of psychology and the supplementary health service professions as to students and practitioners of medicine and dentistry;
- 4.2.2 in view of item 4.2.1, this matter be referred to Professional Boards for their comments and recommendations;
- 4.2.3 it was equally necessary for these matters to be dealt with in similar fashion by each of the different professional Health Councils and, for this reason, the matter be placed on the agenda of the Forum of Statutory Health Councils.

5 DEFINITION OF IMPAIRMENT

5.1 DEFINITION OF IMPAIRMENT FOR PURPOSES OF THE ACT

NOTED as follows:

- 5.1.1 Act 56 of 1974 does not define impairment as such, but specifies in section 51 the circumstances under which the Council may inquire into the position of a person registered with Council who is alleged to be impaired.
- 5.1.2 For the above purpose, section 51(1) of the Act reads as follows:

English

- “51. (1) Whenever it appears to the council that a person registered under this Act -
- (a) has become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow him to continue to practise;
 - (b) has become unfit to purchase, acquire, keep, use, administer, prescribe, order, supply or possess any scheduled substance;
 - (c) has used, possessed, prescribed, administered or supplied any substance referred to in paragraph (b) regularly for other than medicinal purposes; or
 - (d) has become addicted to the use of any substance referred to in paragraph (b),

the council shall cause the matter to be investigated and the council may, if it deems it necessary, hold an inquiry, *mutatis mutandis* in accordance with the provisions of section 42 and the regulations made under section 61(1)(r), in respect of such person.”

Afrikaans

- “51. (1) Wanneer dit vir die raad duidelik is dat iemand wat kragtens hierdie Wet geregistreer is -
- (a) verstandelik of liggaamlik in so ‘n mate onbekwaam geword het dat dit vir die openbare belang nadelig sou wees om hom toe te laat om sy praktyk voort te sit;

- (b) ongeskik geword het om 'n gelyste stof te koop, te verkry, aan te hou, te gebruik, toe te dien, voor te skryf, te bestel, te verskaf of te besit;
- (c) 'n stof bedoel in paragraaf (b) gereeld vir ander doeleindes behalwe as geneesmiddel gebruik, besit, voorgeskryf, toegedien of verskaf het; of
- (d) aan die gebruik van 'n stof bedoel in paragraaf (b) verslaaf geraak het,

moet die raad die saak laat ondersoek en kan die raad, indien hy dit nodig ag, 'n ondersoek *mutatis mutandis* ooreenkomstig die bepalings van artikel 42 en die regulasies uitgevaardig kragtens artikel 61(1)(r), ten opsigte van daardie persoon hou.”

5.1.3 Council's experience has shown that impairments that had been dealt with, could be classified as follows (see *Conference Report*, p. 2):

- a. Physical illnesses or disorders.
- b. Mental illnesses or disorders.
- c. Impairment resulting from alcohol abuse or dependency, or from the abuse or dependence on drugs (especially medicines).
- d. Combinations of any of the above impairments.
- e. Impairment in judgement or ethical conduct in relation to patient care as such or as a consequence of especially b., c. or d. above.

5.1.4 In the *Conference Report*, p. 22, Zabow states the following:

“Impairment has been defined as having significant difficulty in carrying out the requisite tasks of a job at a level objectively approaching competence. It is important to understand that, though subjective distress is often the prelude or concomitant of impairment, it is not the same thing.

“One of the most difficult problems is that there is no universal standard of reference, other than consensual agreement of incompetence or substandard performance when we see it. Clearly there are degrees of dysfunctions. So, we need really to look at degrees of dysfunction and to look at particular concepts

“If we thus look at the three concepts of impairment, incompetence and unethical behaviour, I would suggest that they are approached differently by authorities and by ourselves. The impaired physician is unable to practise medicine with reasonable skill and safety because of physical or mental illness or substance abuse, for example.”

5.1.5 According to E H Morreim in the Hastings Centre Report, 1993, 23:19-27 (as cited in Benatar: *SAMJ* Vol 84, No. 10 October 1994), it is possible to distinguish between the following:

- a. The impaired doctor who is defined as unable to practise medicine with reasonable skill and safety, because of physical or mental illness and includes substance abuse.

- b. The unethical doctor, who knowingly and willingly violates fundamental norms of conduct towards others, especially his/her patients.
- c. The incompetent doctor who is ignorant or lacks appropriate skills, but is not ill.

5.1.6 Other definitions state the following:

- a. Impairment is the exhibition of conduct or professional performance posing a danger to patients (U.K.).
- b. Competence is the ability to appropriately apply knowledge, skills and attitude.
- c. Performance is the translation of competence into action when managing patient care.
- d. Major physician performance problems are identified as -
 - i. inappropriate behaviour
 - ii. deficient management of care
 - iii. deficient competence
 - iv. physician impairment.

5.1.7 RESOLVED as follows:

- a. Provision be made in section 1 of the Act for the following definition of the expression impairment:

“‘impairment’ means a mental or physical condition or the abuse of or dependence on chemical substances which has adversely affected a student’s or practitioner’s competence, attitude, judgement and performance;”.
- b. Subsection (1) of section 51 be revised in view of the fact that -
 - i. the terminology employed in that paragraph was outdated and differed in the English and Afrikaans texts;
 - ii. the provisions were too restrictive as far as impairment was concerned;
 - iii. the provisions included reference to matters not related to impairment, but rather to illegal supply of or dealing in drugs or prescriptions for drugs;
 - iv. the provisions did not fully provide for both students and practitioners.
- c. Paragraphs (a), (b) and (d) be deleted and paragraph (c) of subsection (1) of section 51 be removed from that subsection and be revised to form part of the findings after a disciplinary inquiry since that paragraph mainly deals with illicit practices.
- d. Subsection (1) be reworded to read as follows:

“(1) Whenever it appears to the council that there are indications that a person registered under the Act may have become impaired to such an extent that it would be contrary to the public interest to allow such a person to continue

to fulfill the terms of his or her registration with reasonable skill and safety, the council shall cause the matter to be assessed in accordance with the provisions of section or may, if it deems it necessary, hold an investigation in accordance with the provisions of section and the regulations made under either of those sections in respect of such person”.

5.2 PRACTICE ORIENTED GUIDELINE TOWARDS PREVENTION AND EARLY IDENTIFICATION OF IMPAIRMENT AND THE TREATMENT/REHABILITATION OF IMPAIRED STUDENTS AND PRACTITIONERS
--

In view of the fact that the resolutions reflected in this Report, imply a change of Council's policy from a largely punitive system (still reflected in the Act) to a managed system aimed at treatment/rehabilitation in the interests of patients and registered persons, RESOLVED as follows:

- 5.2.1 That the recommendations of the Workgroup be agreed to.
- 5.2.2 That, an expert Health Committee as specified in item 6 be appointed to accept responsibility on behalf of Council for the management of the proposed system for dealing with impairment.
- 5.2.3 That the Health Committee, should -
- a. consider compiling detailed policy and procedural guidelines which clarify Council's future approach in respect of the prevention, early identification, assessment or investigation and management of students and practitioners who are alleged or found to be impaired as defined in item 5.1.7.a;
 - b. submit the proposed guidelines to all relevant training institutions, professional associations/societies, employer agencies and publish them in Council's *Bulletin* for general information;
 - c. enlist the support of all professions involved for the implementation of those guidelines in a concerted effort at ensuring competent patient care through an ongoing process to maintain and improve the health status of students and practitioners of all relevant professions.

6 ESTABLISHMENT OF A HEALTH COMMITTEE
--

RESOLVED as follows:

6.1 ESTABLISHMENT AND COMPOSITION
--

- 6.1.1 That specific provision be made for the establishment in terms of section 11 of the Act of a standing committee of Council to be designated as the Health Committee.
- 6.1.2 That the Health Committee be composed of -
- a. a chairperson to be a member of Council, appointed on the basis of special interest in the field of student and practitioner impairment;
 - b. two members who need not be members of Council, appointed on the basis of expert knowledge and special interest in this field;

- c. co-opted members appointed on an *ad hoc* basis to advise or assist the Committee on specific matters or on individual students or practitioners.

6.2 STRUCTURING

- 6.2.1 That the positioning of the Health Committee within the structure of Council be finalised after clarity had been obtained on Council's final recommendations to the Minister on the proposed new structure of Council.
- 6.2.2 With a view to item 6.2.1 -
 - a. it be kept in mind that the proposed Health Committee should be comprised of members who are experts in the treatment/rehabilitation of impairment;
 - b. the proposed policy and procedures for managing impairment should equally apply to all persons registered with Council;
 - c. the possibility be considered that the Health Committee to be established by the proposed board for medicine, could be contracted by any or all of the other boards to manage impairment in students or practitioners of those professions, with possible co-option of a representative of such other board where a registered person of that profession was specifically being dealt with.

6.3 ADMINISTRATION

That the Health Committee should have administrative support and should specifically be budgeted for in order to enable the Committee to -

- 6.3.1 execute its administrative responsibilities;
- 6.3.2 hold meetings as directed by its chairperson;
- 6.3.3 conduct informal assessments of alleged impaired students and practitioners;
- 6.3.4 conduct formal investigations of alleged impaired students and practitioners;
- 6.3.5 appoint -
 - a. committees of investigation, if and when required;
 - b. application committees, if and when required;
- 6.3.6 annually report to Council on its activities.

6.4 OBJECTS AND FUNCTIONS

The functions of the Health Committee to be clearly distinguished from the function of Disciplinary Committees and to be as follows:

- 6.4.1 To establish policies and procedures and enlist cooperation and support for the implementation thereof at all levels and to prevent or alleviate circumstances which may lead to impairment in students and practitioners.

- 6.4.2 To establish procedures and mechanisms for the early identification of impairment in students and practitioners and enlist support for the non-statutory or, if required, statutory management thereof.
- 6.4.3 To implement statutory procedures for handling crisis situations which threaten patient safety and care, pending proper assessment or investigation and management.
- 6.4.4 To undertake informal assessments of reports by impaired practitioners themselves, patients of such practitioners, training institutions, colleagues, employing authorities, disciplinary committees of Council or from any other source in relation to alleged impairment of a student or practitioner, making a finding thereon and, if required, imposing conditions of continued registration/practice on such person aimed at treatment/rehabilitation.
- 6.4.5 To undertake formal investigations into any such reports of alleged impairment in the absence of student or practitioner cooperation by the Committee itself, make a finding thereon and, if required -
- a. impose conditions of registration/practice aimed at the protection of patients and the treatment/rehabilitation of the student or practitioner;
 - b. suspend the registration of such student or practitioner conditionally for a specified period pending the outcome of treatment/rehabilitation;
 - c. remove the name of such student or practitioner from the relevant register for health reasons.
- 6.4.6 To appoint an Investigation Committee for the purpose of item 6.4.5 on an *ad hoc* basis, to confirm or amend such Investigation Committee's proposals for management.
- 6.4.7 To hear and consider applications by students or practitioners who were found to be impaired to -
- a. have their conditions of registration/practice amended;
 - b. have such conditions revoked; and
 - c. have their names restored to the register from which they were removed for health reasons.
- 6.4.8 To appoint an Applications Committee for the purpose of item 6.4.7 on an *ad hoc* basis.
- 6.4.9 To oversee the implementation of treatment/rehabilitation programmes of individual students or practitioners in view of conditions of registration/practice imposed, to receive and review reports, to advise on problems that may be encountered and to periodically review the position of each such student or practitioner at least every three (3) years. The Committee also to have the power to make conditions of practice more or less stringent as circumstances requires.
- 6.4.10 To keep a confidential record of impaired students and practitioners.
- 6.4.11 To advise council and any other body(ies) in relation to specific matters pertaining to impairment in students and practitioners registered with Council.
- 6.4.12 To advise on and promote research which may be required in relation to prevention, early identification and treatment/rehabilitation of such students or practitioners.

7	PROCEDURES OF THE HEALTH COMMITTEE
----------	---

7.1	GENERAL POLICY
------------	-----------------------

7.1.1 As a general principle, the procedures of the Health Committee should be confidential as in the relation of “the student/practitioner’s doctor”.

7.1.2 Details of an individual’s diagnosis, reports received, progress in treatment and resolutions by the Health Committee should only be made public -

- a. on instruction by a competent Court of Law;
- b. during a formal investigation resulting from lack of cooperation or compliance on the part of the student or practitioner in question.

7.2	SCREENING OF REPORTS
------------	-----------------------------

7.2.1 On receipt of reports, such reports need to be properly screened to establish whether or not they had the intention to -

- a. lodge a complaint (where someone had been injured or harmed), in which case the matter should be dealt with as a complaint of alleged improper or disgraceful conduct;
- b. enlist action on the part of Council to obtain treatment/rehabilitation for the alleged impaired person, in which case the matter should be dealt with under the health provision of the Act.

7.2.2 In the case of the latter, the reporting person/body -

- a. should be informed if a positive finding of impairment had been made, but that the Committee would further deal with the matter confidentially;
- b. should be informed if a negative finding on impairment had been made, and what the reasons for such finding were;
- c. in the case of b., should be permitted to request a review of that finding on submission of additional supporting evidence.

7.3	EMERGENCIES
------------	--------------------

7.3.1 Specific provision should be made in the Act for the Health Committee to manage emergency situations where reports are received with sufficient grounds to suspect that patient care and safety would be seriously endangered if a practitioner were permitted to continue to practise.

7.3.2 Such emergency should be dealt with by the Health Committee (or a member nominated by the Committee for this purpose) through the temporary suspension of such practitioner from practice, pending a proper assessment or investigation of the matter and a finding thereon.

7.3.3 Should it appear that the practitioner were to be non-cooperative and non-complaint, provision should be made in the Act that Council could submit an urgent application to the Supreme Court to enforce such temporary suspension in the interest of proper and safe patient care.

7.4	INFORMAL ASSESSMENT
------------	----------------------------

- 7.4.1 Specific provision should be made in the Act for the Health Committee to undertake an informal assessment of the alleged impairment of a student or practitioner on receipt of a report alleging such impairment.
- 7.4.2 The procedure to be followed should not be specified in the Act, but in regulations to be made in terms of the Act.
- 7.4.3 Such procedures are to be based on obtaining agreement by the student or practitioner and voluntary cooperation in conducting such informal assessment.
- 7.4.4 Specific provision should be made in the Act for the Health Committee to make a finding on whether or not the person was impaired.
- 7.4.5 Should a positive finding be made, the Health Committee should have the power to -
- a. impose conditions of registration/practice aimed at treatment/rehabilitation (see item 11 of this Report);
 - b. conditionally suspend the practitioner from practising and specifying the conditions of such suspension;
 - c. remove the practitioner's name from the register for health reasons, subject to voluntary cooperation by the practitioner;
 - d. ensure that its instructions in a., b. or c. be implemented or, if not, to deal with the matter as a formal investigation.

7.5	FORMAL INVESTIGATION
------------	-----------------------------

- 7.5.1 Specific provision should be made in the Act for the Health Committee to undertake a formal investigation into the alleged impairment of a student or practitioner, if it were to become evident to the Committee that such student or practitioner refuses to cooperate with the Committee in an informal assessment of the alleged impairment.
- 7.5.2 Such investigation should be either conducted by the Health Committee itself or by an Investigation Committee to be appointed by the Health Committee on an *ad hoc* basis for that purpose, and to be composed of not more than three (3) expert members.
- 7.5.3 The procedures to be followed during a formal investigation, should not be specified in the Act, but in regulations to be made in terms of the Act.
- 7.5.4 Although an investigation of this nature is to be conducted formally, the procedures should be non-adversarial, non-punitive and aimed at making a finding of whether or not the person in question is impaired as defined and, if so, on which grounds the Committee so finds.
- 7.5.5 Should a positive finding be made, the Health Committee should have the power to -
- a. impose conditions of registration/practice aimed at treatment/rehabilitation (see item 11 of this Report);
 - b. conditionally suspend the practitioner from practising and specifying the conditions of such suspension;

- c. remove the practitioner's name from the register for health reasons;
- d. ensure that its instructions or those by an Investigation Committee be implemented, or, if not, to refer the matter for an inquiry in terms of Council's disciplinary procedures to a Disciplinary Committee on the basis of non-compliance with the Health or Investigation Committee's instructions, without the Disciplinary Committee having to determine whether impairment had been proven.

7.5.6 Should the formal investigation be conducted by an *ad hoc* Investigation Committee, such Committee may make a finding of whether or not the person in question is impaired as defined and, if so, on which grounds the Investigation Committee so finds.

7.5.7 Should a positive finding be made by the Investigation Committee, the Committee should have the power to -

- a. impose conditions of registration/practice aimed at treatment/rehabilitation (see item 11 of this Report);
- b. conditionally suspend the practitioner from practising and specifying the conditions of such suspension; or
- c. recommend to the Health Committee to remove the practitioner's name from the register for health reasons.

7.5.8 A recommendation by an Investigation Committee as in item 7.5.7.c to be confirmed, rejected or amended by the Health Committee at its first meeting following such recommendation.

7.5.9 A student or practitioner who is to appear before the Health Committee or an Investigation Committee, may do so alone or together with his/her legal representative.

7.6 HEARING OF APPLICATIONS FOR AN AMENDMENT OR REVOCATION OF CONDITIONS, OR RESTORATION OF A NAME TO A REGISTER

7.6.1 Specific provision should be made in the Act for the Health Committee to hear and consider such applications and to resolve thereon.

7.6.2 Any such application may be -

- a. considered by the Health Committee on the basis of documentation only;
- b. heard by the Health Committee on the basis of documentation and verbal representations by the applicant and/or his legal representative;
- c. referred by the Health Committee for a full investigation by an Applications Committee appointed by the Health Committee for that purpose on an *ad hoc* basis for that purpose and to be composed of not more than three (3) expert members.

7.6.3 The procedures for hearing such an application should take place in formal meeting, should be non-adversarial, non-punitive and should be conducted by the Committee in such a fashion as to enable the Committee to arrive at an objective, fair finding and resolution on the application before it.

7.6.4 On hearing an application, the Health or Applications Committee may -

- a. approve the application;
- b. reject the application; or
- c. amend such conditions of registration/practice as the Committee may find proper in the given circumstances.

8	COPING WITH THE “CONSPIRACY OF SILENCE” AND MEASURES FOR DEALING WITH THE DOCTRINE OF “A DUTY TO REPORT”
----------	---

- 8.1 NOTED that -
- 8.1.1 the *Conference Report* repeatedly referred to a reluctance or even an unwillingness on the part of colleagues (students or practitioners) to act in relation to obvious impairment on the part of another colleague and this tendency had been referred to as a “conspiracy of silence”;
- 8.1.2 the root cause of such “conspiracy” may be traced back to factors such as -
- a. an unwillingness to become personally involved in the “personal affairs” of another person;
 - b. a fear of having to confront a colleague and of the personal, collegial, professional and possible financial consequences of such confrontation;
 - c. a fear of possible litigation and claims for damages which may ensue;
 - d. a fear of being accused of pursuing personal feuds and “witch hunts”;
 - e. a fear of the harmful consequences of disciplinary actions which may result from such reporting to Council both for the reported and the reporting colleague;
- 8.1.3 from a legal point of view, the attitude in law has always been that “I am not by brother’s keeper - I merely have the obligation not to harm him”;
- 8.1.4 in contrast thereto, practitioners have an ethical obligation to render professional assistance in a case of need such as in medicine where the practitioner is obliged to render appropriate medical treatment to a person obviously in need of care;
- 8.1.5 the “conspiracy of silence” is often believed to be supported by the ethical rule pertaining to confidentiality which reads as follows:
- “Divulging any information regarding a patient which ought not to be divulged, except with the express consent of the patient or,”;
- 8.1.6 equally it may be thought to be supported by the ethical rule pertaining to the professional reputation of colleagues which reads as follows:
- “Unjustifiably casting reflection on the probity or professional reputation or skill of a person registered under the Act”;
- 8.1.7 on the contrary, however, these rules are often misread and misinterpreted in that they require that information that ought to be divulged, should be divulged, especially if such information, if not divulged, could pose a serious threat to proper and safe patient care;

- 8.1.8 the management of the “conspiracy of silence” on the one hand and the “duty to report” on the other, create vexed problems which are, however, not peculiar to medicine or the other health professions, but similarly occur in and apply to all organised professions;
- 8.1.9 in the minds of a considerable proportion of the public there exists an accusation against the professions, and in particular against the medical profession, that there was a tendency amongst colleagues to protect each other and to cover up the errors and shortcomings of colleagues;
- 8.1.10 this criticism of the professions seriously undermines confidence in the professions generally and, in particular, in the case of medicine, patient confidence in proper and safe patient care and, therefore, makes this an issue which required urgent attention by all concerned;
- 8.1.11 especially in a country such as South Africa where many patients do not have the capacity, experience or appropriate resources to protect themselves against incompetence or unsafe actions on the part of practitioners, there was an even greater need for appropriate measures to prevent such actions from occurring;
- 8.1.12 in a number of countries, especially Australia and in some of the States in the USA, measures have been introduced to enforce the duty to report, while clearly stating that failure to do so could, if harm occurred to a patient, attract the same liability or censure on colleagues who were aware, as on the impaired practitioner him-/herself;
- 8.1.13 Council, therefore, wished to decisively act in favour of a policy to -
- a. protect proper and safe patient care;
 - b. identify at an early stage the impaired student or practitioner and treat/rehabilitate him/her,
- and to take specific steps needed to overcome the “conspiracy of silence” and to impose an ethical “duty to report” on all colleagues which infers a responsibility on colleagues which may be questioned if not adhered to.
- 8.1.14 in the case of the advocates’ profession there exists a rule of many decades standing in terms of which any advocate who had publicly been accused by a court, a colleague or a client of any unethical, dishonest or devious conduct, should be duty bound to self-report such accusation to his/her bar council for investigation in the interest and for the protection of his/her clients.
- 8.2 RESOLVED as follows:
- 8.2.1 The adoption by Council of the policy changes set out herein, especially accepting a non-punitive approach to matters pertaining to student and practitioner health, would go a long way in overcoming the “conspiracy of silence”.
- 8.2.2 In consequence of Council’s future policy approach, Council would first of all engage in an educational effort to ensure cooperation on the part of all practitioners to identify and manage impairment in students and practitioners in the interest of patient care and, decidedly also, in the own interests of those affected.
- 8.2.3 The availability and proper utilisation of professional and other community resources in overcoming at an early stage the harmful effects of conditions or circumstances which might lead to impairment, should at all times be encouraged.

- 8.2.4 Notwithstanding the above, Council would establish an ethical rule which would oblige a colleague to report impairment in another student or practitioner to Council if he/she was convinced that such other student or practitioner was impaired as defined in item 5.1.7.a of this Report.
- 8.2.5 In view of Council's intention to introduce such duty to report, it be noted that such reporting would occur in a privileged situation and, subject to it being carried out in a *bona fide* fashion, the reporting colleague could not be held liable for -
- a. any civil claim;
 - b. any claim for defamation;
 - c. any unfortunate consequences which might result from such reporting.
- 8.2.6 In addition to the above, Council would also establish an ethical rule which would oblige a student or practitioner to self-report his/her impairment or alleged impairment to Council, if he/she had been publicly accused of being impaired or had been seriously advised by a colleague to act appropriately to obtain help in view of an alleged or established impairment.
- 8.2.7 In view of Council's intention to introduce such duty to self-report, it be noted that such self-reporting would -
- a. have to occur within the framework of the proposed non-punitive policy for managing impairment in the interest of patient care and in order to obtain treatment/rehabilitation for student or practitioner in question;
 - b. discourage the perpetuation of the "conspiracy of silence" amongst colleagues;
 - c. serve as a most valuable impetus towards wanting to receive and actually utilising treatment;
 - d. if not adhered to, serve as an aggravating circumstance, if any harm or damage had occurred to a patient;
 - e. if adhered to, serve as a mitigating circumstance if any harm or damage had occurred to a patient, but could not exonerate the practitioner from such harmful or damaging acts.
- 8.2.8 In view of the latter, impaired practitioners ought to be advised to take legal advice before self-reporting if such practitioner were to fear any disciplinary or criminal charges against him/her resulting from injury or harm that may already have been caused to a patient as a consequence of the impairment of such practitioner.

9	STRATEGIES FOR PREVENTION AND EARLY IDENTIFICATION OF IMPAIRMENT
----------	---

9.1	UNDERGRADUATE STUDENTS
------------	-------------------------------

- 9.1.1 NOTED the following:
- a. In undergraduate students, impairment presents as a person functioning below expectations and manifests with personal, interpersonal or work related difficulties. This is usually the result of stressors which some students cannot handle adequately. Some of these may be cumulative and may lead to impairment at a later stage, even after leaving the training institution.

- b. Impairment, as defined, in undergraduate students should be identified at a stage when it can be regarded as an inability to cope with stresses and manifests as described in paragraph a.
- c. Such stresses have been described by Wilson (see *Conference Report*, pp 14 - 16) and structures should, therefore, be put in place to monitor not only students' academic performance, but also their general conduct.
- d. Inadequate performance as a student should be followed up in order to establish whether it is the result of an inability to handle stresses and, if so, corrective measures should be taken.
- e. Students with backgrounds which may contribute to difficulty in coping with stress should be monitored closely and counselled regularly.
- f. While early identification is important, measures aimed at prevention should be instituted, *inter alia* the following:
 - i. Selection of students on personal as well as academic consideration.
 - ii. Acceptance of the fact that students find themselves in a vulnerable stage of their lives which includes ongoing personality development. Training institutions should, therefore, not only be involved in teaching students the prescribed curriculum, but should also be concerned with teaching students the necessary group and individual skills to equip them to handle stress.
 - iii. Training institutions should become concerned about student needs in relation to workload, relaxation, social adaptation, personal and financial matters, and actively become involved in determining student needs and fears, as well as to provide for adequate counselling.
 - iv. Training institutions should have regular interdepartmental consultations, specifically in order to identify students with altered behaviour and thus possibly requiring early intervention.
- g. Since this would be a new function for training institutions, inter-faculty consultation and exchange of ideas should take place annually.
- h. Details contained in the *Conference Report* and, in particular in Katz's Case Presentations (pp 28 - 31), from which it was obvious that impairment often presents during the undergraduate years of education and training without being sufficiently recognised or dealt with.

9.1.2 RESOLVED as follows:

- a. To refer this matter to the heads of relevant Faculties/training institutions and to coordinating bodies such as the Committees of Deans of Faculties of Medicine and Dentistry for consideration.
- b. To request training institutions to seriously consider -
 - i. the setting up of appropriate and adequate mechanisms to -
 - aa. evaluate students throughout their education and training as suggested above;

- bb. provide students who require assistance, with support services or counselling as might be indicated;
- ii. the issuing, in addition to an academic qualification, of a certificate to each qualifying student to certify that that student is being regarded by the training institution to be -
 - aa. a person who would practise safely on entering into his/her profession;
 - bb. a person who possesses the required skills to practise his/her profession with reasonable skill and safety in relation to his/her qualification and experience;
- iii. to refer students who were found by the training institution to be impaired, as defined, to Council for assessment in terms of item 7.4, or investigation in terms of item 7.5, by the Health Committee, prior to qualifying and entering into the practising of their profession;
- iv. in view of paragraph ii., it was to be kept in mind that students in training for the various professions are registered with Council in terms of the Act and that Council had the statutory responsibility to assure itself, in the interest of the public, that only persons who are competent to practise their profession with reasonable skill and safety be permitted to be so registered.
- c. To request training institutions to provide Council and, in particular the Health Committee with -
 - i. their views on the above matters and proposals on how training institutions themselves would set up strategies and mechanisms to deal with student impairment;
 - ii. their views on the role that Council should play in managing impairment in undergraduate students.
- d. To refer this item also to the Medical and Dental Education Committee, the Education Committees of Professional Boards and those Professional Boards who deal with educational matters themselves, with the request that they consider ways and means of implementing provisions for the management of impairment as part of the maintenance of educational standards in the various professions.

9.2 PRACTITIONERS

9.2.1 NOTED the following:

- a. Many of the factors which may result in impairment in students equally apply to practitioners.
- b. Exposure of practitioners to the pressures of fully-fledged practice and patient care, however, results in additional pressure and stress on the individual who, apart from being a practitioner, now also carries responsibilities resulting from -
 - i. having to be financially self-sufficient;

- ii. possibly having become married with marital and family responsibilities;
 - iii. being a women and having to fend for herself in her various roles of practitioner, homemaker and spouse;
 - iv. the requirement of having to perform as a practitioner with sufficient skill, competence and safety.
- c. The *Conference Report* repeatedly alluded to many of these different aspects (see e.g. Zabow, pp 22 - 27, Allwood pp 39 - 41 and Nash in pp 109 - 116, as well as the various Discussions).
- d. In view of the aspects raised, it was of particular importance to foster ways and means to promote -
- i. self-knowledge and self-awareness in practitioners of danger-signs in themselves;
 - ii. alertness to the symptoms of such danger-signs in colleagues since early identification can only be accomplished through the vigilance of colleagues;
 - iii. the availability of programmes to assist practitioners in self-management of stress and related problems;
 - iv. a willingness to obtain and fully utilise professional and other community resources to alleviate or manage stress in one-self or to assist colleagues in doing so; and

convincing the professions that the ultimate aim is the rehabilitation of the individual and not retribution, while educating them to make them perceptive to the early warning signs, will be the first step.

- e. In the *Conference Report*, Zabow concludes with the following quotation:

“... although the paramount duty is to protect patients, it is also the aim to secure the complete rehabilitation of the doctor. This may not be possible if action is delayed for too long. As with any patient suffering from a serious illness, it is not a kindness to a colleague or to the colleague's patients, to help to conceal or to ignore a developing illness. It is every doctor's duty to inform an appropriate person or body when doubt arises about a colleague's fitness to practise safely and effectively” (p. 26. See also Annexure C (pp 117 - 119)).

9.2.2 RESOLVED as follows:

- a. Planning and implementation of strategies for prevention and early identification of impairment in practitioners is a matter which should receive the ongoing attention of the Health Committee and this item should, therefore, be referred to that Committee.
- b. Planning and publications of guidelines by the Health Committee on practitioner health issues, early symptoms of impairment and available resources of help, including provisions under the Chapter on Health in the Act be referred to the Health Committee for further attention.

- c. Provision to be made in the proposed system for continuing education and training to provide for programmes to teach and assist practitioners to obtain appropriate individual or group skills for stress management.
- d. Professional associations in the various professions be advised that they need to become actively engaged in programmes for health promotion in practitioners by such means as -
 - i. offering of stress management courses;
 - ii. provision of information to practitioners on professional and community resources to assist practitioners who may experience problems which might lead to impairment if not attended to;
 - iii. publication on a regular basis of messages relating to practitioner health issues to promote awareness amongst practitioners of own problems which they themselves experience or which may be observed in colleagues.

10 A NON-STATUTORY INTERVENTION STRATEGY FOR THE VOLUNTARY TREATMENT/REHABILITATION OF IMPAIRED PRACTITIONERS
--

10.1 NOTED -

10.1.1 the paper read by Morrell during the Conference (see *Conference Report*, pp 67 - 72);

10.1.2 a report by Allibone, Chairman: Health Committee, General Medical Council, United Kingdom, in which he states the following:

“Our view at the Council has always been that the main thrust must be to improve the local mechanisms and thereby facilitate the earlier identification and better and more appropriate management of doctors who are impaired. From what I have told you about our local mechanisms these leave much to be desired. At our instigation a major research project has just been completed as to their effectiveness or otherwise.

“

“In the main the Report shows that the local measures are not known, where they are known they are not used and they are not trusted. Accessibility to appropriate services and problems of confidentiality and the possible threat to employment are seen by doctors of being of overriding importance. There was a general reluctance by doctors to become involved in the care of colleagues for what one might term the socially unacceptable diseases - mental illness, alcohol and drug misuse” (see *Report to the International Conference on Medical Licensure/Registration*, Washington, 1994);

10.1.3 that Council supported the efforts of professional associations to be involved in the treatment/rehabilitation of impaired practitioners;

10.1.4 that there might be practitioners who would prefer the assistance by associations at the local level to involvement by Council;

10.1.5 that associations, nevertheless, experiences difficulties in managing such programmes due to the time, legal and cost factors involved;

- 10.1.6 that associations may at times experience similar difficulties as those experienced in the United Kingdom;
- 10.1.7 that not all associations in the various specialities were equally involved in such efforts and that the efforts by the different associations may be structured and functioning differently.
- 10.2 RESOLVED as follows:
- 10.2.1 Local measures and involvement in the treatment/rehabilitation of impaired practitioners should be encouraged as far as possible.
- 10.2.2 Involvement at the local level should specifically be geared at the early identification of "problem situations" and the rendering of assistance to prevent fully-fledged impairment from developing.
- 10.2.3 There was a need, however, to establish some measure of uniformity in the total system for managing impairment in which the roles of professional associations, training institutions and that of Council should complement each other and should be directed by common goals.
- 10.2.4 Towards this end, Council would consider the possibility of arranging a follow-up "conference/workshop" on the basis of the resolutions contained herein, in order to ensure that a national strategy be set in motion to effectively deal with impairment at the levels of students and practitioners in a statutory and non-statutory fashion.

11	CONDITIONS OF REGISTRATION/PRACTICE TO BE IMPOSED ON STUDENTS OR PRACTITIONERS WHO ARE FOUND TO BE IMPAIRED
-----------	--

- 11.1 NOTED the following:
- 11.1.1 Subsection (2),(3), (4) and (5) of section 51 of the Act presently read as follows:
- "(2) If the council, after holding an inquiry under subsection (1), finds that any of the circumstances contemplated in paragraph (a), (b), (c) or (d) of that subsection exist in respect of the person concerned, it may, by order -
- (a) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (a) of subsection (1) exist -
- (i) suspend such person for a specified period from practising his profession or performing any act specially pertaining to his profession; or
- (ii) impose such conditions as it may deem fit, subject to which such person shall be entitled to continue practising his profession; or
- (b) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (b), (c) or (d) of subsection (1) exist -
- (i) impose upon such person any of the penalties referred to in section 42(1);
- (ii) prohibit such person for a specified period from purchasing, acquiring, keeping, using, administering, prescribing, ordering, supplying or possessing any scheduled substance; or

(iii) impose for a specified period such conditions as it may deem fit subject to which such person shall be entitled to purchase, acquire, keep, use, administer, prescribe, order, supply or possess any scheduled substance.

“(3) The council may extend for any period determined by it, the period of operation of, withdraw, or in any other manner amend, any order made under subsection (2).

“(4) The provisions of section 44 shall apply in respect of any person who has been suspended by virtue of any provision of subsection (2).

“(5) Any person registered under this Act who contravenes or fails to comply with any order made under subsection (2) shall be guilty of an offense and on conviction liable to a fine not exceeding one hundred rand.”

11.1.2 Section 44 of the Act referred to in subsection (4) above, reads as follows:

“44. Every person who has been suspended or whose name has been removed from the register in terms of section 42 shall, if his profession is one which, under this Act, cannot be lawfully carried on by an unregistered person, be disqualified from carrying on his profession and his registration certificate shall be deemed to be cancelled until the period of suspension has expired or until his name has been restored to the register by the council.”

11.2 RESOLVED as follows:

11.2.1 The imposing of conditions of registration/practice should have the following objectives:

- a. Securing patient safety through the imposing of restrictions on impaired persons with regard to -
 - i. their status as registered persons (suspension or removal of their names from the relevant Register for health reasons);
 - ii. the locality of their practice (supervised practice in approved hospitals/institutions);
 - iii. the scope of their practice (such restrictions to be specifically related to the nature of the impairment (e.g. a surgeon being permitted only to do consultation, without undertaking any invasive procedures));
 - iv. permission to handle scheduled substances, i.e. restrictions on any or all of the following, namely the purchasing, acquiring, keeping, using, administer, prescribing, ordering, supplying or possessing of any or all of the dependence-producing substances listed in the *Medicines and Related Substances Control Act, 1976 (Act No. 101 of 1965)*;
 - v. prohibition on the use/abuse dependence-producing substances scheduled in the Regulations made under the *Prevention and Treatment of Drug Dependency Act, 1992 (Act No. 20 of 1992)*, published as Government Notice No. R.721 of 30 April 1993 (including drugs other than medicine, such as alcohol and the other so-called “drugs of leisure”).
- b. Ensuring and securing treatment/rehabilitation of the impaired person and such conditions should be -
 - i. individualised;

- ii. appropriate in relation to the impairment in question;
 - iii. realistic and achievable in relation to the nature of the impairment and prognosis for rehabilitation;
 - iv. geared at involving available community resources;
 - v. aimed at the student or practitioner as a member of a family.
- c. Securing supervision of the performance by the impaired person in relation to -
- i. competent and safe patient care;
 - ii. appropriateness of behaviour/conduct with regard to self, others and, in particular, patient-management;
 - iii. adherence to conditions of registration/practice imposed.
- 11.2.2 The conditions of registration/practice should be subject to regular reports to Council for assessment by the Health Committee in order to ensure that their objectives are being achieved.
- 11.2.3 The conditions of registration/practice should be subject to review by the Health Committee (i.e. revoking them or making them more stringent as circumstances may require) and the position of each impaired person requires three-yearly revision.
- 11.2.4 The review of conditions of registration/practice should be employed in a manner to achieve specific therapeutic objectives (i.e. to encourage or reward special efforts at rehabilitation).
- 11.2.5 Such review of conditions may be requested by the impaired student or practitioner, may be recommended by the supervisor or therapist(s) or may be brought about by the Health Committee itself on the basis of reports submitted and its assessment thereof.
- 11.2.6 Non-compliance with conditions of registration/practice should be subject to censure by the Health Committee or, if required, referral for inquiry through Council's disciplinary procedures and appropriate punishment.
- 11.2.7 In the case of non-compliance with conditions of registration/practice, the Health Committee may recommend the appointment by the Executive Committee of a Disciplinary Committee and the matter need not first be submitted to a Committee of Preliminary Inquiry.
- 11.2.8 Management of impairment within the framework of the conditions of registration/practice imposed should keep in mind that this required a team-approach between the Health Committee, the approved supervisor, the approved therapist(s), community resources and members of the individual's family. Thus, the Health Committee needs to require such team approach, and to ensure that the team approach is maintained. The Committee should, therefore, specify conditions accordingly.
- 11.2.9 In order to ensure proper supervision and treatment of impaired students and practitioners, this matter be referred to -
- a. Faculties of Medicine and Dentistry for their specific views on the management of impairment in students;

- b. the Health Committee for specifying guidelines on the principles underlying supervision and treatment of impaired practitioners.

11.2.10 That the provisions of the Act referred to in item 11.1.1 and the relevant regulations be fully revised to provide for the underlying principles of conditions of registration/practice as set out herein.

12 PAYMENT FOR TREATMENT BY IMPAIRED STUDENTS OR PRACTITIONERS

12.1 NOTED that the issue of payment had been discussed during the Conference and that the view was expressed that it should be expected of a practitioner to financially contribute to his/her rehabilitation.

12.2 RESOLVED as follows:

12.2.1 It should be required of impaired practitioners to financially contribute toward the cost of treatment/rehabilitation, since that would enhance motivation to fully utilise the treatment that was offered.

12.2.2 Medical Aid Schemes should be requested to assist impaired persons to obtain the required treatment and, should this not already be their policy, to do so in the case of chronic conditions which require long-term psychiatric or other treatment, as well as in the case of impairment due to alcohol or drug dependency.

12.2.3 Despite the above, treatment should not be permitted to fail due to a genuine inability to pay for such treatment and, for this reason, professional associations be requested to consider establishing a fund which could assist impaired practitioners to pay for treatment which they genuinely cannot afford.

13 AVAILABILITY OF CONDITIONAL EMPLOYMENT OPPORTUNITIES

13.1 NOTED that -

13.1.1 as part and parcel of a planned programme for the rehabilitation of impaired practitioners, Council may make a finding that such practitioners could continue with the practising of their profession under specific conditions;

13.1.2 one such condition could be that an impaired practitioner, even if he/she were to be in private practice should enter and hold a full-time post at a public hospital/institution approved by the President of Council;

13.1.3 in recent times, it had become more and more difficult to obtain suitable conditional employment opportunities for such practitioners, especially in view of present economic circumstances with a large number of hospital posts being frozen or otherwise unavailable for employment and considerable competition to obtain available posts;

13.1.4 in view of the above, the psychosocial circumstances and the potential of such practitioners to be successfully rehabilitated becomes severely prejudiced and jeopardized;

13.1.5 on the other hand, there was appreciation that impaired practitioners posed specific employment problems due to factors such as the nature of their impairment, instability in their employment and the risk factors involved for themselves and their patients;

- 13.1.6 resulting from the above, more and more pressure was being placed on the President of Council to agree to admit such practitioners to private practice situations under some form of supervision, often ill-suited to ensure effective supervision and to protect proper patient care.
- 13.2 In view of the above, RESOLVED as follows:
- 13.2.1 Provision of proper conditional employment opportunities was essential as part of a planned programme for the rehabilitation of impaired practitioners.
- 13.2.2 Provision of proper supervision in such employment opportunities was equally essential and was only possible in full-time employment at public hospitals/institutions with adequate staff to undertake such supervision.
- 13.2.3 It, therefore, be recommended to the Minister of Health that specific provision be made in the Public Service for the establishment of a number of posts which may be occupied by impaired practitioners as conditional employment opportunities under proper supervision and that -
- a. such posts be especially earmarked for employment of practitioners who were referred for conditional employment by Council;
 - b. employment of impaired persons in such posts was based on the need for the person to be rehabilitated and his/her right to be gainfully employed;
 - c. persons employed in such posts, be subject to appropriate supervision with regular reporting on their progress to the Health Committee;
 - d. the employment of a person to such post be time-limited in order to enhance active participation by the practitioner in a well planned and executed treatment programme.
- 13.2.4 It be recommended to professional insurance companies to consider ways and means of -
- a. becoming directly involved in securing suitable employment opportunities for impaired practitioners in terms of their conditions of practice;
 - b. sponsoring such specific posts financially as a service to insured persons in an effort to have them rehabilitated and restored as fully functioning members of their profession.
- 13.2.5 Private institutions such as the Chamber of Mines could also assist in providing employment opportunities for impaired practitioners who are impaired due to conditions other than dependency and a similar request should, therefore, also be addressed to such bodies.
- 13.2.6 It should be the right of the impaired practitioner to accept or reject the offer to occupy such specially created employment opportunity in view of the fact that such employment would probably reveal the impairment to others. On the other hand, acceptance of such employment opportunity would affirm a willingness to become involved in rehabilitation and to actively participate in the process of recovery.

14.1 GENERAL COMMENT

NOTED -

- 14.1.1 that there were a variety of issues which could arise under the heading, but which was impossible to deal with in this Report;
- 14.1.2 the various issues which Van Oosten addressed in his paper and the subsequent discussion (see *Conference Report*, pp 88 - 96);
- 14.1.3 that there was a need to specifically address the following issues:

14.2 PROTECTION OF THE IDENTITY OF A REPORTING BODY OR PERSON
--

- 14.2.1 NOTED that Council often receives reports of alleged impairment from bodies or persons requesting their identity to be protected, while the reported practitioner may insist that such information be divulged.
- 14.2.2 RESOLVED that -
 - a. Council, being a statutory body, was subject to the provisions of section 23 of the *Interim Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993)*;
 - b. details of the allegation against a practitioner need to be made known to the practitioner against whom such allegation was made;
 - c. should there prove to be adequate reasons to do so, the Health Committee could, however, decide not to make known the identity of the informant and to advise the alleged impaired person accordingly;
 - d. should such person then still refuse to accept the Health Committee's ruling, he/she could take the matter to court or enforce a formal investigation whereupon the Committee might be forced to reveal such identity;
 - e. the Health Committee should, in specific circumstances, have the right to submit an application to the Supreme Court for a Declaratory Order on whether or not sufficient information was revealed to enable the Committee to proceed with an assessment or investigation;
 - f. the identity of informants would thus be protected if required, but would be revealed if the Health Committee were forced to do so in the face of an order of court or an enforced formal investigation.

14.3 PROTECTION OF COUNCIL AGAINST CLAIMS FOR DAMAGE AGAINST COUNCIL BY IMPAIRED STUDENTS OR PRACTITIONERS

- 14.3.1 NOTED that there was the possibility that impaired students or practitioners could lay claims for damage against Council due to the findings made or conditions of registration/practice imposed by the Health Committee or an Investigation Committee.
- 14.3.2 RESOLVED that there would be adequate protection of Council against such claims on condition that such finding or conditions of registration/practice had been made and imposed in a reasonable and *bone fide* fashion.

14.4 PROTECTION OF COUNCIL AGAINST CLAIMS FOR DAMAGE AGAINST COUNCIL BY PATIENTS OF IMPAIRED STUDENTS OR PRACTITIONERS

14.4.1 NOTED that there was the possibility that patients of impaired students or practitioners could lay claims for damage against Council on the basis of Council having failed its responsibility to protect patients against harm or injury caused to patients by the acts or lack thereof on the part of impaired students or practitioners.

14.4.2 RESOLVED as follows:

- a. If and when such claims were to arise, Council would have to deal with them in view of the circumstances in the particular case.
- b. In view of such possibility, the Health Committee would have to assure itself at all times that its findings and the conditions of registration/practice which it imposes on any impaired student or practitioner, could reasonably be expected to -
 - i. protect patient care and safety;
 - ii. promote treatment/rehabilitation of the student or practitioner to again function at a satisfactory level of competent and safe patient care.

15 PROCEDURES FOR DEALING WITH PERSONS WHOSE NAMES WERE ERASED FROM A REGISTER FOR HEALTH REASONS AND WHO APPLY FOR THEIR NAMES TO BE RESTORED TO THAT REGISTER

With reference to the contents of Council's existing Form 115, RESOLVED as follows:

15.1 THE TEST FOR RESTORATION

The applicant should have rehabilitated him-/herself to such an extent that it is probable that he/she will act as a credible member of the relevant profession should his/her name be restored to that Register. Furthermore, the applicant should be a fit and proper person to be readmitted to practise in his/her profession.

15.2 DURATION OF ERASURE

No specific period is prescribed before an applicant may apply for restoration of his/her name to the Register. During the consideration of his/her application, cognisance will be had of his/her conduct over a period in order to establish whether he/she completely rehabilitated him/herself with reference to his/her previous impairment/conduct/behaviour.

15.3 ONUS OF PROOF

When regard is had to the test for restoration, the onus of proof is on the applicant to prove that he/she has fully and permanently rehabilitated him-/herself with reference to and in comparison between his/her present conduct/behaviour and the impairment/conduct/behaviour which gave rise to the erasure of his/her name from the Register for health reasons.

15.4 DOCUMENTATION

An application for restoration of a name to the appropriate Register should be in writing and should be accompanied by the necessary documents in support of the requirement specified under the test for restoration and duration of erasure. The application should be submitted timeously in order to allow for arrangements to be made for submission of the application to the Health or Application Committee.

15.5 ATTENDANCE OF MEETING

The applicant is at liberty to personally attend the meeting of the Health or Application Committee alone or together with his/her legal representative when his/her application for restoration to the Register is considered.

15.6 APPLICATION AGREED TO

- 15.6.1 Should an application be agreed to, the name of such applicant could be restored to the relevant Register, subject to the conditions to be specified by the Health or Applications Committee, if any.
- 15.6.2 Should the name of the applicant in question have been erased from the Register for health reasons as well as due to disciplinary action, approval of the application for restoration of the name to the Register be subject to approval by the Health Committee, as well as the Executive Committee of Council.

15.7 APPLICATION NOT AGREED TO

Should the application be not agreed to, the applicant be advised of the reasons for that decision in order to -

- 15.7.1 comply with the requirements of the *Constitution*;
- 15.7.2 assist the applicant to know what additional steps he/she need to undertake for such application to be agreed to.

16 NEED FOR INVOLVEMENT OF FAMILY MEMBERS AND OTHER COMMUNITY RESOURCES TO SUPPORT AND ENHANCE TREATMENT/REHABILITATION PROGRAMMES

RESOLVED as follows:

- 16.1 No student or practitioner functions as an isolated unit in society and, for this reason, no programme for the treatment of the individual may be structured and executed in isolation from members of his/her family and other support systems in society.
- 16.2 Only in exceptional circumstances and if sound reasons for the exclusion of family members have been advanced, should this be considered.
- 16.3 Most communities offer support systems and resources which may effectively be utilised in any structured treatment programme to underpin professional services. The impaired student or practitioner needs to be appropriately advised on their value and how to utilise them.

- 16.4 With a view to the implementation of the strategy for managing impairment which is contained herein, ways and means need to be considered of compiling resource data on available community resources and especially also on the availability of professional experts in the different regions of South Africa who could assist the Health Committee by -
- 16.4.1 undertaking initial assessments and the submission of reports;
- 16.4.2 undertaking ongoing treatment of impaired students and practitioners;
- 16.4.3 serving on Investigation or Application Committees.

17	NEED FOR THE PROMOTION OF RESEARCH AND EDUCATION
-----------	---

RESOLVED that -

- 17.1 there was a serious need for basic research on a variety of matters pertaining to impairment in students and practitioners;
- 17.2 there also was a need to research the effectiveness or not of existing and proposed non-statutory and statutory measures for managing impairment in students and practitioners;
- 17.3 this matter, therefore, be referred to the Health Committee for further investigation and preparing of recommendations on specific projects to be undertaken;
- 17.4 projects of this nature which the Health Committee may suggest, should be negotiated with existing research bodies such as the Medical Research Council, the Human Sciences Research Council, Faculties of Medicine and the Department of Health;
- 17.5 funding of such projects be negotiated with relevant bodies such as professional insurance companies on the basis of specific proposals and proposed protocols for such projects;
- 17.6 the results of such research are to form the basis of future planning for the management of impairment and the educational efforts by Council and the professions to better prevent, identify and rehabilitate;
- 17.7 it be pointed out that such research would equally apply to all the health professions, including those not registered with this Council and, as such, could have an impact on a wide range of aspects relating to the development and maintenance of human resources in health care services;
- 17.8 in view of the above, this matter also to be -
- 17.8.1 placed on the agenda of the to be established forum of professional Health Councils;
- 17.8.2 referred to the Department of Health for the attention of the Directorate: Human Resources.

--- oOo ---