

Safety & Sanctions

A Medico-Legal Perspective

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Cost of Litigation



2015:

The government is faced with contingency liabilities amounting to R25bn for medical malpractice lawsuits, according to the Department of Justice and Constitutional Development, while doctors in the private sector are battling to keep up with steeply rising premiums for professional indemnity cover.

2016:

R61 Billion

2017:

R85-90 Billion

2019:

R93 Billion?

Plus REF DEBT 2017 / 2018

R206.3 Billion

Cost of Indemnity



NEWS 3
SUNDAY TRIBUNE SEPTEMBER 04 2016

Obstetricians flee in face of legal claims

An indemnity cover cost hike means doctors can no longer afford to practise their speciality, writes **Mervyn Naidoo**

THE FEAR of being sued for medical negligence and the high cost of indemnity from legal claims has resulted in a countrywide trend of obstetricians leaving the child delivery profession.

In the past six months, five obstetricians practising pri-

the Road Accident Fund (RAF) with claims they made, on behalf of clients, until government clamped down on loopholes in the (RAF) system. Medical malpractice is now the niche market lawyers are focussed on because of the large lump sum payouts that could be collected.



Netcare Park Lane in Johannesburg... will drop out at the end of the year. The talk of premiums shooting through the roof next year, is scaring them," Archer said.

With fewer obstetricians in private practice, Dr Sagie Naidoo, general secretary of the SA Society of Obstetricians

Major Challenges

“Public health system close to collapsing”

June 2018 (Medical Ombudsman)

- **Doctor burnout**

(Shanafeldt, US & Pinto, UK 2016)

- **“Junior Doctors at breaking point”**

(Daily News, 19 June 2018)

Highest Risk Specialties

1. Obstetrics

2. Neonatology

3. Spine surgery



Communication Failure

At least 70% of all patient action against doctors can be traced directly to **communication failure**.

Patient Expectations

Always enquire about patient expectations

Complaints

The number of complaints received against a doctor is an accurate predictor of litigation.



Apology

When something goes wrong: Apologise



Empathy

Doctors that use empathy routinely,
“litigation-proof themselves” ... Mark O'Brien



Healthcare is TeamCare

When more than one doctor is involved in the care of a patient, risk rises exponentially.



Good clinical notes are important

Into the future



Era of shared decision-making



**Training doctors to be reliability
practitioners of the 21st century**

Are you a **HALT** Doctor?

Hungry

Angry

Late

Tired



Sanctions



Legal Paradigm Shift

The Bolam Test

Where clinical negligence is claimed, a test used to determine the standard of care owed by professionals to those whom they serve, e.g. the standards of care provided to patients by doctors. The case *Bolam v Friern Hospital Management Committee* (1957) 1 WLR 583 established that **if a doctor acts in accordance with a responsible body of medical opinion, he or she will not be negligent.** Subsequently, this standard of care test was amended – the Bolitho amendment – to include the requirement that the doctor should also have behaved in a way that ‘withstands logical analysis’ regardless of the body of medical opinion. The determination of whether a professional’s actions or omissions withstand logical analysis is the responsibility of the court.

Oxford Reference

Bolam Test Shift

“A Reasonable Doctor”



“ A REASONABLE PATIENT”

- 1. Risks that apply to ANY patient**
- 2. Risks that apply particularly to THIS patient**

Legal Precedent

I. Rogers vs. Whitaker

(1992) 67 ALJR. 47 (High court of **Australia**)

I. Castell vs. De Greef

(1994) (4) **SA** 408)

III. Montgomery vs. Lanarkshire Health Board

[2015] **UKSC** 11 On appeal from (2013) CHIH 3

SPECIFIC STRATEGIES

Legal Profession

- Capping of settlement claims
- Contingency Fee Review
- Improve quality of legal representation
- Fast-track timelines in settlements
- Medical assessors to sit with judiciary.

SPECIFIC STRATEGIES

Academic Institutions

- Introduce risk management content into both under- & post-graduate curricula
- Address perceived drop in professionalism & standards
- Targeted research into high risk medical conditions eg. CP.

SPECIFIC STRATEGIES

Regulatory Bodies

- Introduction of Compulsory Malpractice Insurance
- Assess Impact of NHI on Medical Litigation
- Role of HPCSA.

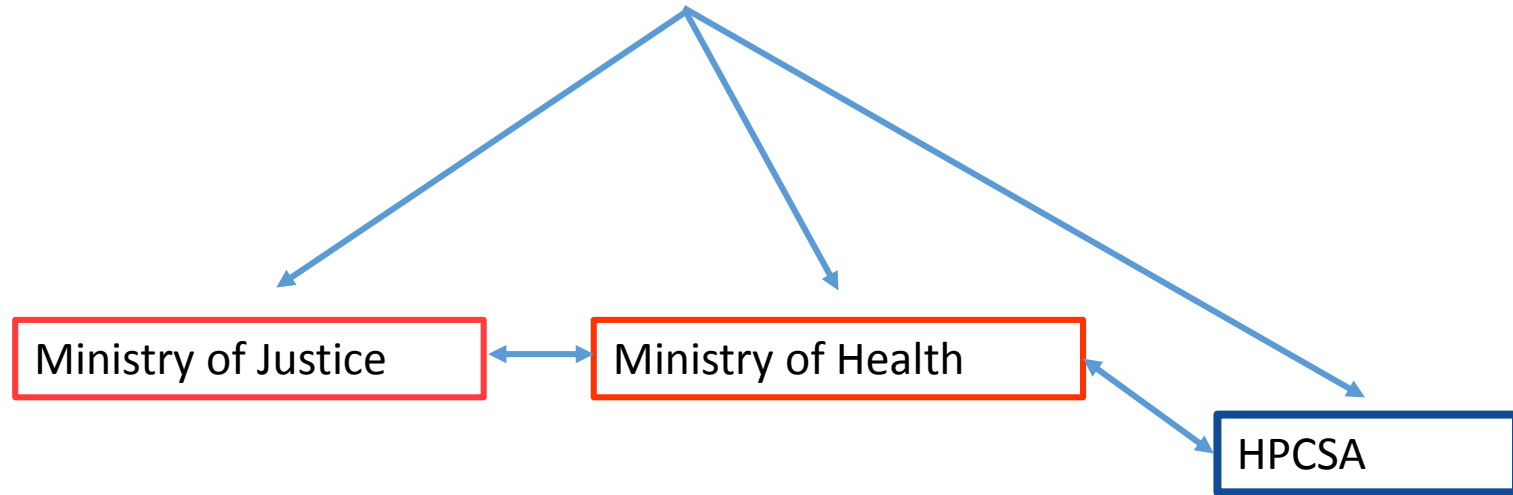
SPECIFIC STRATEGIES

ADR

- Medical Mediation.

SPECIFIC STRATEGIES

MEDICO-LEGAL REGULATORY BODY



Acknowledgements

- **HPCSA**

Preliminary Committee of Inquiry

Professional Conduct Inquiry

- **MPS**

Risk Management Series

Siyabonga!

Thank you!

