Ethics misconduct among dietetic practitioners in South Africa (2007-2013)

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Abstract

Morals refer to a belief-derived system according to which a certain group governs its behaviour, whereas ethics is a broader term whereby belief-system-based behaviour is replaced by a generic code of behaviour, often founded in an international code. In South Africa, the Health Professions Council of South Africa (HPCSA) is a statutory body which was established in terms of the Health Professions Act (No 56 of 1974) to regulate the behaviour of practitioners, and which is committed to serving and protecting the public and providing guidance to registered healthcare practitioners. This study analyses the case content of all guilty verdicts relating to professional standard breaches and ethics misconduct against HPCSA-registered dietitians in the period 2007-2013. One core finding of the study was that a guilty verdict of unethical behaviour against dietitians in South Africa occurs very rarely. Even though dietitians may not be prone to unethical behaviour, it is strongly recommended that thorough, in-depth training in ethics, including bioethics and professional integrity, forms an integral and compulsory part of all undergraduate and postgraduate dietetic programmes.

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Introduction

As a focus of philosophical investigation, the study of ethics lends itself to explorations of both an extraordinarily broad variety of human behaviour and its minutiae.[1] Morals refer to a belief-derived system according to which a certain group governs its behaviour, whereas ethics is a broader term whereby belief-system-based behaviour is replaced by a generic code of behaviour, often founded in an international code. Ethical codes often necessitate the creation of administrative structures which harness the theory via the creation of bodies that exercise the knowledge in a systematic fashion.[1] In South Africa, the Health Professions Council of South Africa (HPCSA) is a statutory body which was established in terms of the Health Professions Act (No 56 of 1974) to regulate the behaviour of practitioners, and which is committed to serving and protecting the public and providing guidance to registered healthcare practitioners. The creation of professional boards, under the auspice of the HPCSA, is a parliamentary requirement underpinning self-regulation by the profession and the establishment of an effective complaint mechanism for holding healthcare professionals accountable.[2] In addition, the legal system provides a mechanism for patients seeking compensation.

The law (national or international) does not require dietitians, or anyone else registered under the Health Professions Act, to practise perfectly. Rather, practitioners are required to have the knowledge and skills comparable with that of other clinicians, and to act reasonably in accordance with established standards. Therefore, when a patient or client holds the opinion that a dietitian's behaviour has had a negative impact on him or her, the person has the right to lodge a complaint of unethical behaviour against the practitioner by means of directing a letter to the HPCSA in which the complaint is stated.[3]

The objectives of this article are:

- To analyse the case content of all guilty verdicts relating to professional standard breaches and ethics misconduct against HPCSA-registered dietitians in the period 2007-2013.
- To analyse the penalty content of all guilty verdicts relating to professional standard breaches and ethics misconduct against HPCSA-registered dietitians in the period 2007-2013.
- To recommend potential continuous professional development (CPD) ethics education intervention strategies.

Methodology

Sample

The study was primarily conducted within a qualitative research paradigm, while specifically focusing on a historical research approach. The focus of historical research is the interpretation of

events which occurred over a specified period.[4] Archival material, e.g. documents and records, is the primary data source in historical research[5] and involves the use of data that the researcher had no part in collecting. In the proposed study, the archive refers to the collated information pertaining to complaints, and alleged misconduct and outcomes of ethics committee hearings, as posted on the HPCSA website.

Procedure

Since 2007, the HPCSA has published an annual list of all the guilty verdicts relating to professional standard breaches and ethics misconduct against registered health practitioners under their jurisdiction. These annual lists are published in the public domain on the official HPCSA website, http://www.hpcsa.co.za/conduct_guilty_verdicts.php.

The documents provide the following information on each guilty verdict:

- The HPCSA practitioner registration number.
- The name of the practitioner.
- The nature of the complaint, including the essential content of each case.
- The penalty.
- The city or town.

The specific data-gathering process for this project focused on the following data categories for each guilty verdict from the respective annual lists for the period 2007-2013:

- The HPCSA registration category.
- The number of cases per verdict.
- The basic case content.
- Specific penalties imposed per verdict.
- Province.

In addition, the qualitative case content of each complaint was recorded in terms of the specific professional standard breach and/or ethics misconduct theme.

Ethics consideration

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.[6] As such, no formal ethics clearance was sought for this project. Even though the names and HPCSA registration numbers of the guilty health professionals are provided in the HPCSA annual lists of guilty verdicts, it was deemed to be irrelevant to the project's objectives. As a result, the data are reported anonymously with regard to any identifying information.

Data analysis

Frequency tables were compiled for the following variable combinations in the first phase of the data analysis:

- The total number of guilty dietitians and guilty verdict cases.
- The total number of specific penalty types.

The specific case content of each guilty verdict was subjected to a qualitative content analysis in the second phase of data analysis.[5] This involved a systematic coding and thematic description of the transgression clusters and specific misconduct linked to the guilty verdicts against dietitians across the total study period. Initially, both of the researchers independently conducted the qualitative content analysis on selected annual guilty verdict documents, followed by several consensus discussions.

Results

The annual number and overall relative percentage of the different penalties imposed on guilty dietitians in South Africa in the period 2007-2013 compared to that in other professions was very low.[7] Only five practitioners were found guilty of seven incidents of misconduct within the reported time. With a total annual average of 2 117 registered dietitians practising in South Africa, 0.003% of those registered were guilty of ethical misconduct. Regardless of this low occurence, scholarly investigation into the cases is justified as 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 does not suggest that these were the only complaints received from the public.

Analysis of the guilty verdicts and penalties revealed that all the transgressors received a monetary fine of R5 000 each. In addition, when the HPCSA deemed the transgression to be of a serious nature, such as improper professional conduct in the form of sexual harassment, the guilty practitioner was also suspended from practice for two years. Both intraprofessional (i.e. misconduct between colleagues within the same registration category) and practitioner-public transgressions were penalised in the same way.

An analysis of the transgression types found that two major transgression clusters predominated among the guilty dietitians,

Table I: Specific misconduct by guilty dietitians (2007-2013) within each transgression cluster

Transgression cluster	Specific misconduct
Negligence or incompetence in treating patients or clients	• Failure to treat the patient for the diagnosed problem • Failure to communicate proper treatment to the patient • Failure to collect appropriate information from the patient
Improper professional role conduct	• *Sexual harassment:* Grabbed and kissed a colleague against her will • *Advertising transgression:* Placed an article in a glamour magazine and on the Internet
Fraudulent conduct	• Incorrect billing, i.e. double billing • Charged for services not delivered, i.e. claimed from medical aid for treatment not given

namely improper professional role conduct and negligent and/or incompetent treatment of patients and clients (Table I). Fraudulent conduct also featured as a third, less common, transgression cluster. Table I provides a detailed description of the specific misconduct linked to each transgression cluster.

Discussion

An analysis of the frequency of the various penalties imposed on guilty dietitians across the total study period indicated that the HPCSA mostly opted to impose financial penalties against the transgressors. However, in the study period from 2007-2013, none of the transgressions was deemed to be serious enough to necessitate removal of the transgressor from the register. The main contribution of this paper lies in the results with regard to the kinds of transgressions (clusters) and specific misconduct committed by the guilty practitioners, as will be discussed hereafter.

Negligence and/or incompetence in treating patients or clients

"Competency", according to the Health Professions Act 56 of 1974,[8] means that a practitioner should confine himself or herself to the performance of professional acts in the field of nutrition in which he or she was educated and trained, and in which he or she gained experience (Annexure 2, Section 1, subrule a, as amended in 2009).

Therefore, any intervention which a dietitian might recommend for which he or she is not duly qualified could be regarded as negligent and potentially harmful to the client. This incompetence is in direct contradiction to the principle of non-maleficence which requires a duly qualified professional not to purposefully create or inflict unwarranted harm or injury on patients, either through commission or omission. Such an act could render a practitioner liable for financial litigation under common law.

Improper professional role conduct

The Health Professions Act 56 of 1974 defines "unprofessional conduct" (Section 1) as improper, disgraceful, dishonourable or unworthy conduct when the profession of a person who is registered in terms of this Act is taken into consideration.[7]

Furthermore, proper professional conduct entails:

- Observing the deontological principles of respect for human dignity, whereby a person is not treated as a means to an end.
- Adhering to the ethical obligation of taking care of a person in a vulnerable position.
- Focusing on non-maleficence, whereby harm must not be be inflicted on a client or a colleague, including avoidance of any exploitation.
- Striving for beneficence in order to assist the client to benefit from the professional-client interaction.[9]

The results indicate that improper professional conduct resulted following sexual harassment and inappropriate marketing techniques. Sexual harassment is a violation of the deontological principle of respect, and in this instance occurred when one person kissed a colleague against her will. Not only is this contrary to professional standards, it is also a violation in terms of the Protection from Harassment Act, 2010, where sexual harassment is seen as unwelcome sexual attention from a person who knows or ought to reasonably know that such attention is unwelcome. Given the trust relationship to which healthcare providers are privy, this kind of behaviour can seriously damage the profession.

Fraudulent conduct

According to the results, two cases of fraudulent conduct occurred following a double billing, whereby a client was charged twice for the same treatment, and this was submitted to the medical aid; and whereby a practitioner claimed from a medical aid for treatment that was not provided. A serious stances is taken in South African legislation on the issue of fraudulent claims for procedures not performed, to the extent that fraudulent behaviour can result in criminal prosecution under Section 66 of the Medical Schemes Act (Act 131 of 1998), as well as the Health Professions Act (Act 56 of 1974). According to these acts, anyone who is found guilty of fraudulent conduct can be punished by a fine, imprisonment for a period not exceeding five years, or both a fine and imprisonment.

According to Section 66 of to the Medical Schemes Act (Act 131 of 1998), fraudulent conduct includes:

- Claiming for the payment of any benefit allegedly due in terms of the rules of a medical scheme, knowing such claim to be false.
- Making false representation of any material fact to a medical scheme, for use in determining any right to any benefit allegedly due in terms of the rules of the medical scheme.
- Issuing a false or inflated statement, account or invoice that may be used to claim from a medical scheme.
- Charging for services only partially rendered, or not rendered at all.

Healthcare providers hold a position of trust. Not honouring the trust implicit in one's professional capacity and integrity could negatively impact upon professional relationships. Fraudulent conduct often pertains to false financial claims which breach the ethical principle of non-maleficence, while harm (financial) is directly inflicted upon a client, or indirectly with respect to his or her future medical aid benefits.

Conclusion and recommendations

One core finding of the study was that guilty verdicts of unethical behaviour against dietitians in South Africa occur very rarely. This may indicate that South African dietitians generally act ethically, patients or clients are naïve and unaware of their patient rights, or affected patients prefer not to "get involved" because they dread the stress which accompanies such complaints. Regardless of the speculative reasons, it is advisable that those in practice take part in a regular discussion group that reflects on ethical issues which might occur or which could potentially be a challenge. Although a mentor relationship is arguably preferred, the HPCSA's strategy for addressing ethical complacency is to compel dietitians to partake in a CPD programme as a source of relevant, integrated, up-to-

date information and/or skills; and specifically the medical ethics courses. Although Scherrer[3] cautions that the relationship between ethics training and ethical behaviour is complex and not necessarily linear, which we fully support, it is also strongly recommended that thorough, in-depth training in ethics, including bioethics and professional integrity, must form an integral and compulsory part of any undergraduate and postgraduate programme by experienced ethics educators.

It remains worrisome that the HPCSA opted to only impose financial penalties without requiring any form of additional ethical awareness training for the transgressors in all of the cases. The implication is that ethical misconduct may increasingly be regarded by practitioners as merely a business or financial risk, but not primarily as an ethics and integrity matter, as indicated in the title of the relevant South African guide document, *Ethical rules of conduct for practitioners registered under the Health Professions Act*.[8] Ethics awareness, sensitivity and knowledge need to be firmly established within professional conduct. Only then will personal value perspectives, professional choices and preferences, as well as societal developments, result in high-level scrutiny and discussion of moral and ethical principles, specifically regarding the interpretations and application of ethics in diverse healthcare contexts.[10]

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