

**REPORT OF THE MINISTERIAL TASK TEAM (MTT) TO
INVESTIGATE ALLEGATIONS OF ADMINISTRATIVE
IRREGULARITIES, MISMANAGEMENT AND POOR
GOVERNANCE AT THE HEALTH PROFESSIONS COUNCIL OF
SOUTH AFRICA (HPCSA):
A CASE OF MULTI-SYSTEM FAILURE**

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EXECUTIVE SUMMARY

REASON FOR THE ESTABLISHMENT OF THE MINISTERIAL TASK TEAM

There has been a progressive increase in the number of complaints made against the Health Professions Council of South Africa (HPCSA) by individual practitioners, professional associations, training institutions and other organizations. The complaints accused the HPCSA of poor communication, prolonged delays in processing applications for registration, unfair processes followed in professional conduct enquiries, and failure to provide guidance in resolving challenges affecting the health professions. The complaints against the HPCSA culminated in the submission of more than 30 anonymous letters (apparently by HPCSA staff) to the office of President of the HPCSA between November 2014 and January 2015, which alleged maladministration, irregularities, mismanagement and poor governance at the HPCSA. The Minister of Health, acting in accordance with the provision of Section 6(g)(5) of the Health Professions Amendment Act, 29 of 2007, took a decision to appoint a Ministerial Task Team (MTT) on the 25th February 2015 to investigate allegations of administrative irregularities, mismanagement and poor governance at the HPCSA.

TERMS OF REFERENCE OF THE MTT

1. To undertake an investigation and interview relevant stakeholders about the state of affairs of the HPCSA in relation to the adverse reports received by the Minister;
2. To investigate and make findings with regards to the governance responsibilities of the HPCSA;
3. To investigate and make findings with regards to the procurement procedures followed with the acquisition of the ORACLE information system;
4. To investigate and make findings with regards to the allegations of maladministration made by staff members staff who have since resigned;
5. To investigate and make findings with regards to the allegations of maladministration made in the 30 submissions purportedly by staff members that were delivered at the office of the President of the HPCSA;
6. To investigate and make findings with regards to the fitness of the Chief Executive Officer (CEO) and the Chief Operations Officer (COO) to run the organisation;
7. To investigate and make findings with regards to whether or not the state of affairs has affected the effectiveness and efficiency of HPCSA;
8. To investigate and make findings with regards to whether or not there has been any impact on the training of health professionals;
9. To investigate and make findings with regards to whether or not the registration of the foreign workforce has been negatively affected;

10. To investigate and make findings with regards to whether or not a forensic audit needs to be conducted.

METHODS

MTT conducted voluntary interviews of people with intimate knowledge of the HPCSA (i.e., current and past staff members of the HPCSA and members of the HPCSA Council). Practitioners and other stakeholders were invited through the HPCSA website to make written submissions to the MTT. In addition, the MTT collected and reviewed information from the available documents in the HPCSA such as reports on previous investigations and minutes of the various committee meetings. The CEO/Registrar, the COO and the General Manager Legal Services all declined repeated invitations to be interviewed by the MTT.

FINDINGS

There were four major findings of the MTT:

1. First, there was evidence of administrative irregularities, mismanagement and poor governance at the HPCSA which was documented in the Forensic Investigation undertaken by KPMG in 2011, on the procurement procedures followed in the acquisition of the ORACLE information system. The Forensic Investigation had found that a former CEO/Registrar and Executive Committee of the Council of the HPCSA approved a contract which eventually cost over R30 million without following tender procedures, and thus appointed a contract company in an irregular manner. The appointment of consultants by a former Acting CEO/Registrar and the current COO (in his previous capacity as Senior Manager Legal Services) was also not done according to the HPCSA's procurement policies and procedures. These activities amounted to unauthorised, irregular, fruitless and wasteful expenditure. The Forensic Investigation Report made a number of recommendations, including possible disciplinary action against the officials involved, but no definitive response was demonstrated by the Council of the HPCSA to the recommendations of this report.
2. The MTT treated the numerous anonymous written allegations that were submitted to the President of the HPCSA as the possible work of a whistle-blower or whistle-blowers, and investigated these allegations through the interviews and review of submissions received from stakeholders of the HPCSA. The veracity of the allegations that had specific reference to the inefficiency and the ineffectiveness of the HPCSA was supported in general by the findings of the oral interviews and the written submissions of the stakeholders. The key themes that emerged from the interviews and written submissions reflect the failure of the HPCSA to carry out its statutory mandate in its core

five functions of (1) registration of health professionals, (2) examination and recognition of foreign qualifications of practitioners, (3) professional conduct enquiries, (4) approval of programmes in training schools, and (5) continued professional development. In addition, there was failure of management systems including (6) information communication technology, (7) data management, (8) space management, (9) human resource management and (10) overall risk management.

3. Regarding the fitness of the CEO/Registrar and COO to run the HPCSA:

3.1 Both internal and external stakeholders as well as the documents reviewed identify the failure of the CEO/Registrar to perform to the required standard in the majority of the key functions. These include the recruitment and management of staff to ensure an effective and sufficient administration of HPCSA policies and procedures; maintenance of sound public relations with stakeholders; and ensuring that service delivery processes are in line with the Batho Pele principles. These findings are not compatible with the CEO/Registrar who is fit to run the HPCSA. The refusal by the CEO/Registrar to appear before a MTT set up by the Minister and to provide information relevant to the investigation fly in the face of her ability to lead the organisation, instead it justifies the drawing of an adverse inference against her. In addition, her conduct possibly also amounts to an act of misconduct (insubordination), given that she is appointed by the Minister who also appointed the MTT.

3.2 Similarly, the internal and external stakeholders identify the failure of the COO to perform to the required standard in the six key functions of the post, including operational management of registration and records, infrastructure and resources, human resources, and stakeholder relations. In addition, the COO was implicated in acts of unauthorised, irregular and/or fruitless and wasteful expenditure in a matter relating to the ORACLE information communication technology system which remain unresolved. Furthermore, the COO had taken the HPCSA to court in his pursuit of his failed application for the post of CEO/Registrar and lost the case with costs awarded against him. The MTT has not been placed in possession of any documents which prove that he has paid the costs due to the HPCSA. To the best of our knowledge, he has not paid the legal costs of the organisation. These factors do not reflect a COO who has the best interests of the HPCSA. Failure of the COO to effectively and efficiently manage the operations of the HPCSA, and his involvement in activities that are against the best interests of the HPCSA all make the COO, in our opinion, to be unfit for office. Persistent refusal by the COO to appear and assist the MTT in its

work regarding the operations at the HPCSA should only be viewed in a negative light, and possibly also constitutes an act of misconduct (insubordination).

3.3 Practitioners, professional associations and other organizations complained of mismanagement, maladministration, and irregularities in the system of professional conduct enquiries which is overseen by the General Manager: Legal Services. The key complaints relate to the turnaround period once a complaint has been lodged, with practitioners and complainants sometimes waiting for months to years for feedback from the Council. The delays prejudice practitioners, whilst at the same time leading to members of the public to lose confidence in the Council's complaints system. As one of the most senior managers in the HPCSA administration, the General Manager Legal Services showed complete disregard for the gravity of the status of the HPCSA during the work of the MTT by refusing to assist it in its work. This conduct, combined with numerous complaints from individuals and organisational stakeholder, in our opinion renders the incumbent to be unfit to serve in a senior leadership role in the organisation.

4. Additional insights gained by the MTT in this investigation:

4.1 The HPCSA (the Council, its professional boards and management structures) in its current form has failed to provide leadership and guidance to the health professions on a number of issues. These issues include the harmonisation of competing regulatory frameworks in higher education (i.e., National Qualifications Framework, South African Qualifications Authority and Higher Education Qualifications Framework) pertaining to accreditation, registration and quality assurance, with the regulations of HPCSA, as well as the finalization of the scope of practice of the different health professions.

4.2 The HPCSA has severe structural deficits that contribute to its dysfunction. (a) It has been transformed from a structure that served one Medical and Dental Board (the old South African Medical and Dental Council) to one which serves 12 Professional Boards and a Council – each of which has a number of subcommittees. (b) The HPCSA registers a diverse range of health professionals (27 categories of health professions) from emergency care practitioners who qualify after several weeks of training, to medical sub-specialists who qualify after 15 years of university education and training. Though the basic regulatory frameworks for these professions relating

to assuring the standards of practice, the accreditation of training programmes and training institutions, the registration of practitioners and the regulation of professional conduct of practitioners, are common for these professions, the values, applications, extent and complexity of these basic regulatory frameworks differ for the 27 professions. (c) Decision-making in Council - particularly on scope of practice - is often difficult or impossible to achieve because of conflicts of interest among the different professional groups. It may thus be appropriate for each profession to manage its affairs and its values – and interact with society.

4.3 There are institutional problems in relation to skills mix. The HPCSA employs more lawyers than health professionals. There is apparently not a single medical practitioner (or a member with a medical background) in the legal department that is responsible for professional conduct enquiries – most of which relate to the medical profession. The professional conduct enquiries are dominated by lawyers and proceedings adopt an adversarial legal approach rather than a professional conduct enquiry that is required by its mandate. Therefore, there are insufficient health professionals within the HPCSA to guide the health professions.

CONCLUSIONS AND RECOMMENDATIONS

The HPCSA is in a state of multi-system organisational dysfunction which is resulting in the failure of the organisation to deliver effectively and efficiently on its primary objects and functions in terms of the Health Professions Act 56 of 1974. The MTT recommends that the Minister of Health takes the following measures to address this serious deficit in the health system:

1. Institute disciplinary and incapacity proceedings against the Registrar/CEO, COO and General Manager of Legal Services.

1.1 In the opinion of the MTT, the CEO/ Registrar has, over the three years that she has been in the post, not performed satisfactorily in accordance with her signed employment contract and what can reasonably be expected from someone in her position, given the nature of the job and the responsibilities that attach to it. In the same period, she has failed to demonstrate leadership and accountability, failed to implement the recommendations of reports of external organizations commissioned by the HPCSA to assist it in its problems, deferred her responsibilities to the COO and failed to address the escalating negative experiences of stakeholders. MTT recommends that the Minister should, after

consultation with the Council of the HPCSA, institute appropriate disciplinary and incapacity proceedings against the CEO/ Registrar, and should consider her suspension pending the completion of these proceedings.

- 1.2 The COO has been implicated in acts of unauthorised, irregular and/or fruitless and wasteful expenditure in a matter relating to the ORACLE information communication technology system which remain unresolved. In addition, he pursued legal action against the HPCSA for not being appointed to the position of CEO/Registrar and has presided over the multi-systems failure in the operations of the HPCSA. MTT therefore recommends that the Council of the HPCSA should institute appropriate disciplinary and incapacity proceedings against the COO, and should consider his suspension pending the completion of these proceedings.
- 1.3 The General Manager of Legal Services, who did not cooperate with this investigation, has overseen a dysfunctional system of professional conduct enquiries which has prejudiced practitioners and the public. The MTT is of the view that he should be dealt with on the same basis as the CEO/Registrar and COO as recommended above.

2. Appoint an interim executive management team

The primary task of the interim executive management team ("the team"), led by an Acting CEO/Registrar appointed by the Minister after consultation with the Council of the HPCSA, and other persons appointed by the Council after consultation with the Minister, will be to address the 10 dysfunctional areas identified under Findings (no. 2) above, including the establishment of a functional registration system, streamlining the process of examination and recognition of qualifications, restoring the integrity of the system for professional conduct enquiries, ensuring an efficient system for the approval of training schools, and improving the function of the continued professional development system. In addition, the team will be required to overhaul the information communication technology, data and records management systems, address the need for additional space, create a conducive human resource environment, and improve risk management of the organisation.

These changes, and if taken together with other recommendations, will take time to be implemented. The MTT is of the view that the team should be given adequate time to

implement these changes. The ideal appointment to this role should include persons with medical training and experience in turning around failing organisations. The team will require resources and personnel to address the dysfunctional administrative systems of the HPCSA.

3. The incoming and future Councils of the HPCSA should undergo a structured induction process to ensure an understanding and appreciation by all its members of their legal and governance obligations

The MTT has found evidence of mismanagement, maladministration and irregularities at the HPCSA which are best exemplified by the KPMG Forensic Investigation of 2011. The mismanagement, maladministration, and irregularities began under the Council of 2005 to 2010. The subsequent Council of 2011-2015 commissioned the KPMG investigation. However, the MTT has found that the recommendations of the KPMG Report were not addressed in a comprehensive and decisive manner, and in the interests of the HPCSA. In addition, the Council promoted an individual who was accused of serious irregularities by the KPMG report to a position of COO of the organisation, despite the said individual taking the Council to court and not paying and/or refusing to pay the legal costs after losing the case.

Furthermore, the two Councils of the HPCSA have presided over a chronically failing organisation without taking adequate measures to address the administrative malaise.

There is, therefore, a need for the incoming and future Councils and professional boards of the HPCSA to undergo a thorough and structured induction process to ensure an understanding and appreciation by all members of their legal and governance obligations.

Finally, the National Department of Health has a Directorate of Public Entities under which the HPCSA falls. There is also the Forum of Statutory Health Professions Councils established by s50 of the National Health Act and the departmental representatives on the various boards of the HPCSA. All of these should be strengthened to ensure proper oversight of the HPCSA.

4. Address the recommendations of the KPMG Forensic Report

The recommendations of the KPMG Forensic Report of November 2011 are as relevant to the HPCSA today as they were made about 5 years ago.

We recommend that the HPCSA should provide a report to the Minister of Health on how it has addressed the recommendations of the KPMG Forensic Investigation Report within 6 months of the assumption of office by the incoming Council of 2015.

5. Institute a full organisational review and a proposal for a new governance and administrative structures for the future

The time has come to review the value of the HPCSA after 15 years of its establishment. This report reveals deep systemic dysfunction of the organisation which was extended from a single professional board (as the South African Medical and Dental Council for medical and dental practitioners) to a mega-organisation of 12 professional boards. There is a lack of coherence and cohesion in this large dysfunctional multi-professional organisation.

It is the view of the MTT that the best interests of the health system are not served by the current structure and organisation of the HPCSA. The MTT recommends that consideration be given to the unbundling of the HPCSA into at least two entities: the historic Medical and Dental Council (which constitutes a third of the current membership of the HPCSA) and a Health and Rehabilitation Council (for the rest of the professional membership of the HPCSA). These new Councils would join the South African Pharmacy Council, the South African Nursing Council and other autonomous councils in the Forum of Statutory Health Professions Councils.

THE END