A role of ethics in the medical context is to protect the interests, freedoms and well-being of patients. A critical analysis of unprofessional conduct by medical practitioners registered with the Health Professions Council of South Africa (HPCSA) requires a better understanding of the specific ethics misconduct trends. To investigate the objectives the case content and sanctions of all guilty decisions related to unprofessional conduct against HPCSA-registered medical practitioners in the period 2007 to 2013 were analysed. A mixed methods approach was followed. The quantitative component focused on annual frequency data regarding the number of decisions taken against practitioners, number of practitioners, number of specific sanctions and categories. Relatively few medical practitioners (between 0.11% and 0.24%) are annually found guilty of unprofessional conduct. The annual average number of guilty decisions per guilty medical practitioner ranged between 1.29 and 2.58. The three most frequent sanctions imposed were fines between ZAR10 000 and ZAR15 000 (28.29%), fines between ZAR1 000 and ZAR8 000 (23.47%) and suspended suspensions between 1 month and 1 year (17.37%). The majority of the unprofessional conduct involved fraudulent behaviour (48.4%), followed by negligence or incompetence in evaluating, treating or caring for patients (29%). Unethical behaviour by medical practitioners in South Africa occurs relatively infrequently.

**Keywords:** ethical transgressions, fraud, HPCSA, Incompetence, negligence

**Introduction**

Ethics is a discipline of thought and study regarding the moral principles of human behaviour. In the medical context it focuses on the protection of the interests, freedoms and well-being of patients. Codes of Ethics are profession-specific guidelines for members of that profession to make responsible ethical choices and to encourage self-regulation and high levels of professional integrity. These codes should not merely be viewed as a set of legal rules, regulations and/or guidelines, but also as educational and informative instruments that can influence the ethical behaviour of practitioners and assist them in the actual decision-making process. However, the codes in themselves do not prevent unethical behaviour. Personal and professional integrity motivates health practitioners to maintain and develop high levels of ethical professional conduct as well as to stay abreast of the latest clinical skills and advances through continuous professional development activities.

There is an increasing demand by the public to hold health-care providers liable for unprofessional conduct and as such they may lodge a complaint with the Health Professions Council of South Africa (HPCSA). In South Africa, the HPCSA is a statutory body that was established in terms of the Health Professions Act (No. 56 of 1974) to regulate the behaviour of health professionals, and which is committed to serving and protecting the public and offering guidance to registered health-care professionals. The HPCSA provides a process through which the public can lodge complaints of an ethical nature against health-care professionals whom they deem to have acted in an unethical way.

Within seven days after receiving a complaint, the Registrar of the HPCSA needs to forward the complaint to the health-care professional concerned and request a written explanation from him/her. Upon receipt of the health-care professional’s explanation it is then referred to the Professional Board with whom the health-care professional is registered. However, note that health-care professionals may refuse to submit an explanation. A Professional Conduct Committee will hold a professional conduct enquiry in those cases where the Board decides that there are grounds for the complaint. If the professional conduct enquiry finds the health-care professional guilty of misconduct penalties may be instituted. The committee’s decision is final, unless either party lodges an appeal.

Ethical conduct by health-care practitioners registered with the HPCSA is of critical importance to ensure the highest possible level and quality of health-care services to the public of South Africa. However, some practitioners on occasion fail to uphold these high values and practices, which then result in various forms of harm to patients, medical aid funds and/or the health-care system. As such, a better understanding of recent unprofessional and unethical conduct by medical practitioners can better inform the public, fellow medical practitioners and health-care system officials of problematic conduct areas and/or gaps in current ethics education programmes. In addition, the nature of specific sanctions and/or corrective actions imposed by the HPCSA can raise public trust in the formal mandate of the HPCSA in the Health Professions Act (Act 56 of 1974) to ‘serve and protect the public in matters involving the rendering of health services by persons practising a health profession’ (Paragraph 3(j)). Ultimately, it is intended to maintain and advance optimal health-care practices that recognise and respect patients’ human rights.

The objectives of this study were the following:

- to analyse the case content of all guilty decisions related to unprofessional conduct of HPCSA-registered medical practitioner-
ers in the period 2007 to 2013 (i.e. frequency and category of unprofessional conduct); and

- to analyse the sanction content of all guilty decisions related to unprofessional conduct of HPCSA-registered medical practitioners (2007 to 2013) (i.e. the sanction imposed as well as the frequency thereof).

**Methods**

A mixed-methods approach was followed. The quantitative component focused on annual frequency data regarding the number of medical practitioners who were found guilty of unprofessional conduct by the HPCSA’s Professional Conduct Committee, the number of guilty decisions (cases), and the number of specific sanctions and categories. The qualitative research component focused on a historical research approach, using archival material as primary data source6 and organising the available data into categories of complaints as per HPCSA’s classification. The study archive was the annual lists (2007–2013) of all the guilty decisions related to the unprofessional conduct against HPCSA-registered medical practitioners. The annual lists are accessible in the public domain on the HPCSA website (http://www.hpcsa.co.za/RecentConvitions/Historical).

**Data analysis**

In the quantitative phase of data analysis, frequency tables were compiled for the following variable combinations: (1) annual number of medical practitioners and guilty decisions; (2) annual number of specific sanctions imposed on guilty medical practitioners; and (3) frequency of the various transgression categories linked to guilty medical practitioners. In the qualitative phase of data analysis, the specific case content of each guilty decision was investigated by means of qualitative content analysis,7 whereby data are systematically coded according to the category criteria as set out by the HPCSA. This coding was done independently by the two authors and then collated into a final set of data after iterative consensus discussions.

**Ethics exemption**

Studies that focus exclusively on the analysis of publicly available documents are generally exempted from the requirement for ethics clearance from a registered research ethics committee. In addition, the guilty medical practitioners’ identifying information (names and HPCSA registration numbers) is not reported.

**Results**

**Frequency of guilty decisions**

The annual frequency of guilty decisions of unprofessional conduct against medical practitioners in the period 2007 to 2013 is indicated in Table 1. These numbers are compared with the number of registered practitioners as per the HPCSA’s website (http://www.hpcsa.co.za/Publications/Statistics). It needs to be noted that although the HPCSA reports on guilty decisions in its annual reports running from 1 April to 31 March (of the following year), the data available on the HPCSA’s website were clustered per calendar year and reported likewise. Furthermore, the legal framework to guide the conduct of a health-care professional registered with the HPCSA is regulated by the Health Professions Act (No. 56 of 1974); it has been amended a number of times over the past 40 years. Until 2010 reference was made to ‘unprofessional conduct’ while it was changed in 2010 to ‘improper or disgraceful conduct’. Since the study data span a period of two regulatory periods (i.e. pre-2010 and from 2010 onwards), reference to unprofessional conduct will inter alia also mean improper or disgraceful conduct.

The results indicate that a small fraction of registered medical practitioners (mean = 0.17%; range 0.11% to 0.24%) were found guilty of unprofessional conduct annually. The overall mean number of guilty decisions per guilty medical practitioner is 1.91 (range 1.29 to 2.58).

**Unprofessional conduct categories**

Table 2 provides a more detailed description of the most frequent specific unprofessional conduct in each category, excluding unlawful conduct and criminal convictions categories that primarily involve legal transgressions rather than ethical transgressions.

The frequency of unprofessional conduct categories linked to the guilty decisions against medical practitioners across the total study period (2007–2013) is indicated in Table 3.

Almost half of the unprofessional conduct involved fraudulent conduct (48.4%), followed by negligence or incompetence in evaluating, treating or caring for patients (29%). The rest of the unprofessional conduct combined (22.4%) occurred in a variety of unprofessional conduct categories with criminal convictions (0.3%) being the least common.

**Sanctions imposed on guilty practitioners**

The annual number and overall relative percentages of the different sanctions imposed on guilty medical practitioners in the period 2007 to 2013 are indicated in Table 4.

The three most frequent sanctions imposed on guilty medical practitioners were fines between ZAR10 000 and ZAR15 000 (28.29%), fines between ZAR1 000 and ZAR8 000 (23.47%) and suspended suspensions between 1 month and 1 year (17.37%). Combined, these sanctions constitute approximately two-thirds (69%) of all the sanctions. Fines up to ZAR30 000 were imposed

| Year | Registered medical practitioners | Guilty decisions | Guilty medical practitioners | Guilty decisions per guilty medical practitioner |
|------|----------------------------------|------------------|-----------------------------|---------------------------------------------|
|      | (n)                              | (n)              | (n) (%                      | Mean                                        |
| 2007 | 34 449                           | 155              | 69 0.20                     | 2.25                                        |
| 2008 | 33 529                           | 147              | 57 0.17                     | 2.58                                        |
| 2009 | 33 800                           | 78               | 38 0.11                     | 2.05                                        |
| 2010 | 36 633                           | 102              | 52 0.14                     | 1.96                                        |
| 2011 | 37 289                           | 58               | 45 0.12                     | 1.29                                        |
| 2012 | 38 742                           | 106              | 65 0.17                     | 1.63                                        |
| 2013 | 39 541                           | 156              | 95 0.24                     | 1.64                                        |
for unprofessional conduct such as negligent patient care (e.g. failure to attend timeously to a critically ill patient, sub-standard emergency care, delegation of care duties to a lesser qualified person), while higher fines (ZAR30 000 to ZAR100 000) were imposed for unprofessional conduct such as performing surgical procedures not adequately trained for and issuing drug prescriptions without examining patients. Arguably the most serious sanction, namely removal from the HPCSA register, was imposed in cases where medical practitioners were found guilty of the following: negligent administration of drugs resulting in a life-threatening situation; failure to keep proper anaesthesia records of a patient; indecent assault of patient; indecent sexual conduct whilst examining a patient; multiple counts of fraudulent medical aid claims; and acting as private practitioner whilst not registered and using another practitioner’s practice number for this purpose. Cognisance must be taken that the definition of fines to be imposed on unprofessional conduct was slightly altered in 2010; however, the implication thereof stays the same.

**Discussion**

The annual frequency of guilty decisions against medical practitioners in the period 2007 to 2013 (Table 1) indicates that less than 0.25% of medical practitioners are found guilty annually of unprofessional conduct. The lowest frequencies were recorded in 2009 (0.11%) and 2011 (0.12%). This is comparable to the 0.2% annual disciplinary enquiries against psychologists in South

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**Table 2**: Specific unprofessional conduct by guilty medical practitioners within each category

| Unprofessional conduct category | Specific unprofessional conduct (in descending order of frequency) |
|---------------------------------|---------------------------------------------------------------|
| Fraudulent conduct              | • Charge patient for non-rendered services                   |
|                                 | • Issue misleading, inaccurate or false medical statements    |
|                                 | • False or inaccurate medical aid claims                     |
|                                 | • Issue medical certificates or prescriptions without examining or seeing patient |
| Negligence or incompetence in evaluating, treating and caring for patients | • Sub-optimal diagnostic assessment of patient                |
|                                 | • Negligent or inappropriate administration, dosage or prescription of drugs |
|                                 | • Sub-standard surgical procedures                           |
|                                 | • Negligent post-operative patient care                      |
|                                 | • Failure to refer patient to a specialist for evaluation and treatment when indicated |
|                                 | • Failure to properly manage care of patient, in some cases resulting in patient’s death |
| Improper professional role conduct | • Perform surgical/intervention procedures while not duly qualified or trained to do so |
|                                 | • Failure to respond to HPCSA enquiry or investigation letter |
|                                 | • Utter verbal derogatory, abusive or rude remarks towards patient |
|                                 | • Failure to communicate diagnosis or treatment with patient and/or family members |
| Negligence regarding patient documents and records | • Issuing medical certificates and prescriptions that do not comply with HPCSA guidelines |
|                                 | • Failure to keep proper clinical notes and medical records   |
| Perform procedures and interventions without patient consent | • Failure to obtain consent for charging above-medical-aid fees |
|                                 | • Failure to obtain consent for intervention procedure, including failure to obtain preoperative consent |
| Professional registration misconduct | • Employ a non-HPCSA-registered person as health professional |
|                                 | • Practise as medical practitioner when not duly registered with HPCSA |
| Disclose confidential information without permission | • Unauthorised disclosure of patient information to third party |

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**Table 3**: Frequency of unprofessional conduct categories linked to guilty medical practitioners

| Unprofessional conduct categories | Number of unprofessional conduct decisions | % of all unprofessional conduct decisions |
|-----------------------------------|--------------------------------------------|------------------------------------------|
| Fraudulent conduct                | 436                                        | 48.4                                     |
| Negligence or incompetence in evaluating, treating or caring for patients | 262                                        | 29.1                                     |
| Improper professional role conduct | 88                                         | 9.8                                      |
| Negligence regarding patient documents or records | 39                                         | 4.3                                      |
| Perform procedures or interventions without patient consent | 36                                         | 4.0                                      |
| Professional registration misconduct | 18                                         | 2.0                                      |
| Unlawful conduct                  | 10                                         | 1.1                                      |
| Disclose confidential information without permission | 8                                          | 0.9                                      |
| Criminal convictions              | 3                                          | 0.3                                      |
Patterns of unprofessional conduct by medical practitioners in South Africa (2007–2013)

1. Actual or potential prejudice to the patient and the medical aid scheme. In line with this trend, the most common unprofessional conduct category amongst medical practitioners in the current study was fraudulent conduct. Similar to recently reported specific types of health-care fraud in South Africa, the current study found the following frequent specific types of fraudulent conduct: charge patients for non-rendered services; issue misleading, inaccurate or false medical statements; and submit false or inaccurate medical aid claims. In addition, the current study also found fraudulent conduct involving medical certificates, specifically the issuing of medical certificates without examining or seeing the patient. These findings are similar to those of Ogunbanjo and Knapp van Bogaert who recently reported that South African health-care professionals frequently provide fraudulent medical certificates to medical scheme members and then claim from the scheme for the consultation.

2. Negligence or incompetence in evaluating, treating and caring for patients is directly linked to the primary responsibilities of medical practitioners, namely that they have a duty to act in the best interests of their patients. However, in contravention of this duty, the current study found that a number of medical practitioners were guilty of failure to refer a patient to a specialist for evaluation and treatment when so indicated. This is in contravention of the HPCSA's Ethical and Professional Rules, which state that a medical practitioner 'shall not fail to

| Table 4: Annual frequency of sanctions imposed on guilty medical practitioners (2007–2013) |
|---------------------------------------------------------------|
| Penalty | 2007 (n = 79) | 2008 (n = 67) | 2009 (n = 40) | 2010 (n = 56) | 2011 (n = 46) | 2012 (n = 68) | 2013 (n = 100) | % of all penalties |
| Caution or caution and reprimand | 9 | 4 | 2 | 6 | 4 | 7 | 7 | 8.55 |
| More training | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 0.44 |
| Fine ZAR1 000 to ZAR8 000 | 20 | 12 | 13 | 13 | 16 | 16 | 17 | 23.47 |
| Fine ZAR10 000 to ZAR15 000 | 21 | 21 | 14 | 7 | 12 | 24 | 30 | 28.29 |
| Fine ZAR20 000 to ZAR25 000 | 2 | 2 | 7 | 9 | 13 | 5.26 |
| Fine ZAR30 000 to ZAR60 000 | 3 | 3 | 8 | 3 | 11 | 3.07 |
| Fine ZAR70 000 to ZAR100 000 | 5 | 1 | 1 | 1 | 1 | 1.32 |
| Cost of inquiry | 4 | 1 | 1 | 1 | 1 | 1.32 |
| Suspension 1 month to 1 year | 18 | 13 | 8 | 17 | 9 | 3 | 11 | 17.32 |
| Suspension 1.5 to 4 years | 3 | 3 | 2 | 1 | 2 | 1 | 9 | 4.61 |
| Suspension 5 to 10 years | 1 | 1 | 1 | 1 | 3 | 1.32 |
| Erase from register | 2 | 3 | 4 | 1 | 1 | 2.41 |
| Practise under supervision during suspension | 3 | 1 | 1 | 1 | 0.88 |
| Attend medical ethics course | 4 | 1 | 1 | 1 | 1.10 |
| Report of competence following period of suspension | 1 | 1 | 1 | 1 | 0.44 |
| Community service at public hospital | 1 | 1 | 1 | 1 | 0.22 |
| Apology to patient | 1 | 1 | 1 | 1 | 0.22 |

Health-care fraud is globally, including in South Africa, a growing problem. It primarily involves false and/or inaccurate medical aid claims. Such fraudulent behaviour almost inevitably results in actual or potential prejudice to the patient and the medical aid scheme. In line with this trend, the most common unprofessional conduct category amongst medical practitioners in the current study was fraudulent conduct. Similar to recently reported specific types of health-care fraud in South Africa, the current study found the following frequent specific types of fraudulent conduct: charge patients for non-rendered services; issue misleading, inaccurate or false medical statements; and submit false or inaccurate medical aid claims. In addition, the current study also found fraudulent conduct involving medical certificates, specifically the issuing of medical certificates without examining or seeing the patient. These findings are similar to those of Ogunbanjo and Knapp van Bogaert who recently reported that South African health-care professionals frequently provide fraudulent medical certificates to medical scheme members and then claim from the scheme for the consultation.

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Negligence or incompetence in evaluating, treating and caring for patients is directly linked to the primary responsibilities of medical practitioners, namely that they have a duty to act in the best interests of their patients. However, in contravention of this duty, the current study found that a number of medical practitioners were guilty of failure to refer a patient to a specialist for evaluation and treatment when so indicated. This is in contravention of the HPCSA’s Ethical and Professional Rules, which state that a medical practitioner ‘shall not fail to

Africa during 1990 to 1999. However, note that direct comparison with the results from other studies is difficult due to variations in the definitions and/or applications of key constructs, such as ‘complaint’, ‘preliminary enquiry’, ‘disciplinary enquiry’ and ‘decision’. The overall mean number of unprofessional conduct decisions per guilty medical practitioner was slightly below two decisions, which indicates that medical practitioners who engage in unprofessional conduct are generally repeat offenders.
communicate and cooperate with medical practitioners, medical specialists and other health practitioners in the diagnosis and treatment of a patient.\textsuperscript{9}

In this study, improper professional role conduct was characterised by the following three specific misconduct areas: performing medical procedures while not duly qualified or trained; failure to respond to HPCSA enquiries; and uttering inappropriate, derogatory or abusive remarks towards patients.\textsuperscript{8} The latter constitutes a direct form of disrespect for patient dignity.\textsuperscript{9} The obligation to exhibit respect for patients' inherent human worth (dignity) is one of the main responsibilities of health professionals in South Africa.\textsuperscript{8} Also, it is globally regarded as a principle of bioethics and human rights; see for example Article 2(c) and Article 3(1) of the Universal Declaration on Bioethics and Human Rights.\textsuperscript{10}

The universal principle to obtain prior, voluntary informed consent from the patient for any medical intervention directly guides the patient–practitioner relationship, specifically in terms of respect for the patient's autonomy to explore alternative health services, diagnostic procedures and medical interventions.\textsuperscript{11} In light of its fundamental nature in the patient–practitioner relationship, it is disconcerting that 4% of the unprofessional conduct transgressions by medical practitioners in the current study were either the failure to obtain consent for charging above-medical-aid fees or the failure to obtain consent for intervention procedures, including preoperative consent.\textsuperscript{8}

Confidentiality refers to the responsibility to protect personal information from unauthorised access, disclosure, use, loss or theft.\textsuperscript{12} Similar to informed consent, the principle of respect for privacy and confidentiality of patients' personal information is universally recognised.\textsuperscript{12} Less than 1% of the unprofessional conduct transgressions by medical practitioners in the current study involved disclosure of confidential patient information to a third party without due permission.\textsuperscript{9}

Conclusions and recommendations

The study's results are comparable to international findings (USA)\textsuperscript{13} with regard to the specific types of unprofessional conduct by medical practitioners. An encouraging finding is that unethical behaviour by medical practitioners in South Africa occurs relatively infrequently; only 0.17% of all registered medical practitioners in the period 2007 to 2013 were found guilty of unprofessional conduct. However, it should be kept in mind that this number represents only the formal HPCSA guilty findings. One might reasonably expect that a fair number of unprofessional conduct cases remain unreported by the affected patients due to patients' unwillingness to report misconduct, patient naivety and/or a low awareness regarding patient rights in South Africa. Many individuals in South Africa live in predominantly paternalistic communities, which may result in affected patients preferring to not 'get involved' due to the perceived effort and emotional stress that may accompany a formal HPCSA complaint against a 'trusted' medical practitioner.

Another noteworthy finding is that the most frequently (~52%) imposed sanction on guilty medical practitioners was fines between ZAR1 000 and ZAR15 000, followed by suspended suspensions between 1 month and 1 year. However, in the context of unprofessional conduct it was surprising that only 1.1% of the guilty decisions required the medical practitioner to attend a medical ethics course. This raises some concerns regarding the justification and effectiveness of the imposed sanctions to facilitate future ethical conduct. The last important finding is that fraudulent conduct was by far the most common unprofessional conduct category, specifically charging patients for non-rendered services, issuing misleading/inaccurate/false medical statements and submitting false or inaccurate medical aid claims.

The following two recommendations are offered to address unprofessional conduct amongst medical practitioners in South Africa:

- The relationship between ethics education and ethical behaviour is complex. As such, the most important recommendation emanating from this study is that systematic and comprehensive ethics training must, as a matter of urgency, form an integral and compulsory part of all health-related undergraduate, postgraduate and continuous professional development programmes.\textsuperscript{14} Ethics training should cover more than basic theoretical concepts, principles and codes, such as moral theories and professional codes of conduct. It should also include in-depth explorations of critical thinking, problem-solving and decision-making skills to actually deal with the wide variety of complex ethical dilemmas in health-care contexts.\textsuperscript{4} Furthermore, it should also address the divide between abstract theoretical ethics principles contained within medico-legal documents and real-life ethical dilemmas.\textsuperscript{11} Since guilty medical practitioners should reasonably have known that their conduct would be regarded as unprofessional before engaging in the various unprofessional actions, one may argue that any sanction to attend a medical ethics course could be regarded as 'too little too late'. However, it can also be argued that such ethics education sanctions have potential value to assist medical practitioners in gaining deeper understanding of the fundamental ethical principles that render certain conduct as unethical and/or unprofessional. Ultimately, it holds the potential to increase the quality of professional conduct towards patients and the health-care system. The authors firmly believe that ethics education interventions have great value to modify professional–health-care/professional–patient conduct if such courses are structured around small-group sessions, in-depth discussions and mentoring.

- The HPCSA should reconsider the aim and nature of sanctions imposed on medical practitioners found guilty of unprofessional conduct. Fines and suspended suspensions are sanctions that in themselves do not facilitate sound professional and ethical conduct. In addition to fines and suspended suspensions, we would like to strongly recommend that all guilty practitioners be required to complete a duly accredited medical ethics course and be required to earn additional Continuing Educational Units for Ethics, Human Rights or Medical Law activities in a specified period of time.\textsuperscript{12} Such corrective measures will closely align with the HPCSA's view (2008:3) that 'to be a good health-care practitioner, requires a lifelong commitment to sound professional and ethical practices ...' (emphasis added).\textsuperscript{8}

Lastly, it should be noted that this article considered only the HPCSA's formal guilty verdicts against medical practitioners. As a result, it did not attempt to analyse the content and/or frequency of all the complaints lodged with the HPCSA, including the proportion of withdrawn and dismissed complaints versus the final guilty verdicts.
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Note
Both authors contributed equally to this work.

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