The South African Medico-Legal Association

Rendering Quality Care in a Litigious Environment

Presented to – SAMA Conference 2018
Patient Centred Care – Putting the Heart Back Into Medicine

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Medical Negligence Crisis in South Africa – Major Harm to Multiple Victims

- **Surgeons** - hundreds of thousands of rand per annum / +++++
- **Patients** – often millions of rand per individual / ++++++
- **Provincial departments of health** - billions of rand / ++++++
- **National economy and taxpayers** - many billions of rand
- **Medical profession as a whole** – Reputation and trust
QUESTIONS

• What is clinical negligence?
• Who is responsible for negligent harm?
• How does the law respond to clinical negligence?
• What are typical examples of clinical negligence?

ANSWERS

• Upstream interventions.
• Downstream interventions.
WHAT IS CLINICAL NEGLIGENCE?

- Wrongful act or omission
- Foreseeable harm
- Below standard of a REASONABLE practitioner
- Specific discipline
- Circumstances.
WHO IS RESPONSIBLE FOR NEGLIGENT HARM?

• Medical practitioners individually.
• The medical profession collectively.
• Medical training institutions.
• Licensing authorities.
• Health facilities.
HOW DOES THE LAW RESPOND TO NEGLIGENCE?

- South African Laws and Courts
  - Test – Reasonable Standard (see 5 elements above).
  - Onus of proof on Claimant.
  - Reasonable mistakes are condoned.
WHAT ARE TYPICAL EXAMPLES OF CLINICAL NEGLIGENCE?

• Doctor/patient interaction.
• Pre-operative (State – Private sector).
• Intra-operative.
• Post-operative.
ANSWERS

• **Upstream interventions (Doctors)**
  - Ethical practice

• **Downstream interventions (Doctors + Lawyers + DoH + Insurers)**
  - Legally privileged peer review meetings
  - Mediation
UPSTREAM INTERVENTIONS BY DOCTORS - ETHICAL PRACTICE

2 STATUTORY AUTHORITIES IN SOUTH AFRICA

• 1. – HPCSA (Highest Standard)
• 2. - Courts of Law (Lower and More Forgiving Standard)

I.E. 3 IDENTIFIABLE LEVELS OF CLINICAL PRACTICE

• Level 1 – Ethical Standard.
• Level 2 – Sub-Ethical but Reasonable Standard.
• Level 3 – Negligent Standard (i.e. Below Reasonable).
UPSTREAM INTERVENTIONS BY DOCTORS - ETHICAL PRACTICE

- HPCSA Ethical Rules and Guidelines - 16 Booklets – Read – Understand – Apply
- [http://www.hpcsa.co.za/Conduct/Ethics](http://www.hpcsa.co.za/Conduct/Ethics)
- Discipline specific guidelines of specialist associations etc.
UPSTREAM INTERVENTIONS BY DOCTORS - ETHICAL PRACTICE

• Booklet 1 – Core Ethical Values and Standards – 13 Core Values
• Most importantly
  • No 1 - Respect for persons
  • No 2 - Non-maleficence
  • No 12 - Professional competence and self improvement
• Booklet 9 – Informed consent
UPSTREAM INTERVENTIONS BY DOCTORS - ETHICAL PRACTICE

RECORD AND PRESERVE ADEQUATE NOTES

• Comprehensive notes - WHEN?
  – First consultation – When recommending surgery (etc) – First meaningful post-op consultation – At time of any complication/unexpected symptom/unhappiness

• Comprehensive notes - WHAT?

• Also!
  – Operation notes – Post-op instructions -
UPSTREAM INTERVENTIONS BY DOCTORS - ETHICAL PRACTICE

• Bedside Manner
• Communication
• Preparation
• Discipline specific guidelines
• Mindfulness during surgery
• Attentive post-operative management
• Record and preserve adequate notes
DOWNSTREAM INTERVENTIONS

(DOCTORS + LAWYERS + DOH + INSURERS)

• Legally Privileged Peer Review Meetings
  — Plus Feedback to CPD Training (Upstream)

• Medical Mediation
  — Plus Feedback to CPD Training (Upstream)
SAMA DOWNSTREAM INTERVENTIONS

(OTHER PROFESSIONAL ASSOCIATIONS - HPCSA - UNIVERSITIES - STATE HEALTH INSTITUTIONS)

• CPD training in Applied Medical Ethics
• Integrated undergraduate education in Ethics
• Clinical governance
• Regular Morbidity and Mortality meetings
• Legally privileged Peer Review meetings
• Promote Pre-mediation Clause and Mediation of disputes
CONCLUSION

1) ETHICS (SAMA)

2) Legally Privileged Peer Review (SAMA)

3) Medical Mediation (SAMA)

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