South African Society of Psychiatrists

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HEALTH CARE WORKERS' PROFESSIONAL RESPONSIBILITY TO BE HEALTH ADVOCATES

Both the Gauteng Department of Health's Life Esidimeni or "Marathon" project, as it was described at the time, unfolding over more than two years from 2015 to 2017, as well as the more recent incident in March 2018 of reported concerns about possible human rights violations at Tower Hospital in the Eastern Cape, compelled the South African Society of Psychiatrists (SASOP) to identify its responsibility and to find its voice in terms of health advocacy. The SASOP realised that it had to act publicly as the protector of the interests of its members, of the discipline of Psychiatry as well as of serving the community and had to develop the capacity and process to engage in these occurrences, through which what became extended advocacy processes engaging with several stake holders and partners.

However, following the collective effort by the South African Society of Psychiatrists, as well as of individual clinicians' in this regard, some observers have been critical of this activity, arguing that professionals should keep themselves to providing clinical services as salaried workers employed by government departments and to adhere to principles of e.g. the Public Service Act which regulates such employer-employee relationships.

As a result many individual clinicians are unsure about how to approach the matter of health advocacy and how to report concerns and problems in a correct way internally as employees, and/or externally as members of professional associations. Many health workers engaged in health advocacy also often reflect on how much "trouble" they could have avoided, it they did not try to play their role as health advocate. It is therefore imperative to clarify to the position of health workers', including medical practitioners' and psychiatrists' professional responsibility to be health advocates.

In this regard. It should firstly be noted that at both undergraduate and postgraduate levels, the Health Professions Council of SA (HPCSA), as well as training facilities in the form of the faculties of Health Sciences across the country, have all embraced the "CanMED's" principles of medical education in their curricula, alluding to the profile of the graduates that must be produced, to include the role of being an advocate. The WITS Faculty of Health Sciences, for example, has adopted a formal course in health advocacy for all its undergraduate health sciences students , from therapeutic sciences (nursing, occupational therapy, physiotherapy) to clinical sciences (medical, clinical assistants). In addition, the College of Psychiatrists amongst other of Colleges of Medicine f South African has adopted advocacy as one of seven "core competencies" that candidates qualifying with its FCPsych qualification must demonstrate, namely being a medical expert/clinical decision make, communicator, collaborator, manager, health advocate, scholar and professional.[1] According to

[1] College of Psychiatrists (C PSYCH). Regulations for Admission to the Fellowship of the College of Psychiatrists of South Africa. Appendix F(B), p20 (Nov 2016) Available from: https://www.cmsa.co.za/view_exam.aspx?QualificationID=30; Accessed 27 April 2018

this, candidates are required to also be knowledgeable about and be able to apply the principles and processes of (mental) health promotion and (psychiatric disorder) illness prevention. This includes the ability to inform and educate patients and their families effectively.

With its experiences to date, the SASOP has therefore partnered with the Rural Health Action Project (RHAP) to assist the Society with the training of its members in several provinces, on how to be health advocates, considering the legal and professional contexts in which different clinicians are working.[2] During 2018, the RHAP's "VOICE Project" has already been presented in four provinces, with workshops also attended by other categories of mental health staff, such as occupational therapists, nurses and psychologists.

The VOICE program assists health care professionals to understand the legal foundation of advocacy, as well as raising concerns and whistle blowing to improve standards, using internal mechanisms and external mechanisms, advocacy in terms of the roles of the health care practitioner, and organizations that can assist.[3] According to this guide, health care workers can advocate for a better health system through different roles at times: (1) Representative (speaking for); (2) Accompanying (speaking with); (3) Empowering (enabling); (4) Mediating (facilitating communication); (5) Modelling (demonstrating practice); and (6) Negotiating (bargaining); and (7) Networking (building coalitions). The guide further provides an overview of the legal foundations, of raising concerns and whistle-blowing - including what protection can be obtained through the Protected Disclosure's Act, No 26 of 2000, of how to use "internal" and "external" mechanisms to resolve an issue, as well as on organizations that can assist health care providers with addressing and avoiding health care failures. The RHAP can be contacted about this guide, as well as about arranging training for health care workers at www.rhap.org.za or info@rhap.org.za; and tel 010 601 7427.

According to Marije Versteeg-Mojanaga from the RHAP, principles that apply for clinicians to be activists, include:

- Medical (and health) practitioners have an ethical duty and a professional responsibility to act in the best interest of their patients. This duty includes advocacy for patients, both as a group (such as advocating as a public mental health care group) and as individuals – according to the World Medical Association.
- While the SA Public Service Regulations of 2001 and updated in 2012, state that health care providers are expected to raise any problems with their immediate supervisor and are not to criticise government policy "irresponsibly" in the public domain, it also state that health care providers must put the public interest first in the execution of duties.
- It is important for health care workers to be informed about ethical guidelines by the HPCSA, the legislative and policy framework in which they are working, in particular the constitutional mandate for advocacy. Several sections of the South African Constitution are protecting individual and organizational rights. Other rights statements are e.g. the Patient Rights Charter, and Health Worker Rights, which include the right to expose corruption and unethical practices and to claim compensation if dismissed as a result of a protected disclosure.
- Sometimes internal or external "reporting" of health care challenged and patient rights violations is required, which can also be done confidentially and anonymously.

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[2] SASOP. SASOP-RHAP STATEMENT ON MENTAL HEALTH ADVOCACY TRAINING. Jan 2018. Available: https://www.sasop.co.za/Statements/Advocacy_Training_2018; Accessed 27 July 2018

[3] Rural Health Advocacy Project. VOICE. A Health Care Provider's Guide to Reporting Healthcare Challenges: Principles, Tools & Strategies. Version 2. April 2017.

- The Protected Disclosure Act provides protection for people who blow the whistle on conduct that is prejudicial to public interest. Health care workers can ensure that they are protected by going through one if the "four doors" that the Act proscribes, namely: (1) First Door – disclosure to an employer; (2) Second Door - Disclosure to a legal advisor; (3) Third Door - Disclosure to a regulatory or independent body; (4) Fourth Door – "General protected disclosures" apply when disclosure happened outside the first three doors because of a good cause. The latter include: (1) the impropriety is of an exceptionally serious nature; (2) the disclosure has been made to an employer and no action has been taken within reasonable period; (3) the employee has reason to believe that the evidence will be concealed or destroyed if the disclosure is made to the employer and there is no prescribed regulatory body to approach; or (4) the employee has reason to believe that he or she will be subject to occupations detriment.
- Reporting of wrongdoing is about ensuring that "malpractice, fraud, corruption, dangers that compromise patient health and safety" are dealt with, in a manner that promote individual responsibility and organisational accountability. It is not only a right but also a duty to report conduct that is prejudicial to public interest.
- Any employment contract will be invalid if it conflicts with the Protected Disclosures Act and Public Service Act,[4] which states that *". . . an employee, in the course of his or her official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence or which is prejudicial to the public interest."*
- According to the Protected Disclosure Act: Practical Guidelines for Employees (No 70231, August 2011):
    - By remaining silent about corruption, offences or other malpractices taking place in the workplace, an employee contributes to, and becomes part of, a culture of fostering such improprieties.
    - Every employer and employee has a responsibility to disclose criminal and other irregular conduct in the workplace
- A 10-step advocacy framework include:
    (1) Taking action: overcoming obstacles to action
    (2) Selecting an issue: identifying and drawing attention to an issue
    (3) Understanding the political context: identifying the key people to influence
    (4) Building the evidence base: doing our homework and mapping the potential roles of relevant players
    (5) Engaging others: winning the support of key individuals/organisations
    (6) Elaborating strategic plans: collectively identify goals and objectives and best ways to achieve them
    (7) Communicating messages and implementing plans: delivering your messages and counteracting the efforts of opposing interest groups
    (8) Seizing opportunities: timing interventions and actions for maximum impact
    (9) Being accountable: monitoring and evaluating process and impact
    (10) Catalysing health development: build sustainable capacity throughout the process

In terms of the dilemma of dual loyalties that health workers may experience in terms of being employees, or service providers to funders, the Physicians for Human Rights and School of Public Health and Primary Health Care at UCT, already in 2002 drafted a guide on how to approach such problems as individuals or collectively, as

[4] Protected Disclosures Act, Act 26 of 2000 and amended (Act 5 of 2017)

a professional association.[5] They defined dual loyalty as *"simultaneous obligations, express or implied, to a patient and to a third party, often the state." They noted that "health professional ethics have long stressed the need for loyalty to people in their care", . . .* but, *"in the modern world, however, health professionals are increasingly asked to weigh their devotion to patients against service to the objectives of government or other third parties." . . . "Dual loyalty poses particular challenges for health professionals throughout the world when the subordination of the patient's interests to state or other purposes risks violating the patient's human rights."*
Mechanisms proposed by the group for national professional societies to promote human rights include:

(1) Establish professional practice standards to address dual loyalty and human rights
(2) Hold members accountable to these standards through appropriate disciplinary action
(3) Facilitate adoption of self-audits by health workers
(4) Make advisers and counsellors available skilled in human rights and ethics
(5) Provide direct support for health professionals in high-risk situations
(6) Establish or facilitate an independent oversight and reporting structure to play an ombudsman role
(7) Newsletters and websites to raise awareness; conduct ongoing debates
(8) Initiate and support ongoing ethical and human-rights training
(9) Ensure that constitutions of national professional organisations establish the organisation as independent of the state
(10) Submit shadow reports to United Nations treaty-monitoring bodies for human-rights treaties
(11) Advocate for legal, administrative and social changes that will enable health professionals to respect, protect and fulfil the human rights of their patients
(12) Develop plans and invest resources to increase members' support for these organisational actions

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[5] Physicians for Human Rights and School of Public Health and Primary Health Care, UCT (PHRSPH&PC-UCT), 2002. Dual Loyalty and Human Rights in Health Professional Practice; Proposed Guidelines and Institutional Mechanisms. Available: https://s3.amazonaws.com/PHR_Reports/dualloyalties-2002-report.pdf (accessed 26 February 2017)