

## Memorandum to His Excellency: President Cyril Ramaphosa - March 2020

### 1. Introduction

We, the internationally trained medical graduates, having associated under the South African Internationally Trained Health Professionals Association (hereinafter the 'Association') and having obtained our qualifications from global institutions affiliated to the World Health Organisation, have consistently directed our grievances to:

- His Excellency –President Cyril Ramaphosa;
- The National Minister of Health – His Honourable Zweli Mkhize
- The Health Professionals Council of South Africa (hereinafter the 'HPCSA').

On the premise that His Excellency- President Ramaphosa has publically promised:

- To end corruption and injustice committed by government departments and officials, however the treatment of South African doctors who obtained their qualification/s abroad manifests an injustice that is being perpetuated under the President's known watch and to the prejudice of South Africans citizens.
- To end wasteful expenditure as pursued by government entities such as the HPCSA and DOH.

Despite promises made, our grievances remain unanswered, thus compelling our members to seek relief through the Courts, an option they wish to avoid.

In 1994, South Africa achieved a constitutional democracy which enshrined the fundamental human rights of every citizen of this country, amongst others:

- Everyone is equal before the law and has the right to equal protection and benefit of the law [s9]
- Everyone has inherent dignity and the right to have their dignity respected and protected [s10]

- Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law [ 22]
- Everyone has the right to have access to health care services, including reproductive health care [s 27]
- Everyone has the right of access to any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights [s 32]
- Everyone has the right to administrative action that is lawful, reasonable and procedurally fair [s33(1)]
- Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. [s33(2)]

Therefore, this presentation, places on record the consistent violation of our members' inalienable fundamental human rights on the basis that they obtained their qualifications at global institutions, at their own cost and in pursuit of their right to choose and practice their profession. This belief springs from the unlawful and unreasonable treatment members receive from officials of the HPCSA when raising their grievances and receiving no satisfactory answers or no answer at all.

Grievances addressed to the MOH suffer the same fate since the MOH has never attended to the collective grievances raised on behalf of our members.

**2. Urgent intervention is sought on questions which have not or have not been satisfactorily addressed by the President of South Africa, The Honourable Minister of Health and The Health Professions Council of South Africa.**

**2.1. Memorandum to His Excellency – President Cyril Ramaphosa -2018**

At a meeting held at the Chatsworth Youth Centre in 2018 a memorandum was handed to the President, by hand. The President promised to respond to the concerns raised in the Memorandum. At the time of writing this memorandum there has been no response from the office of the President, despite a firm promise given at the meeting by the President that he will undertake to have these issues addressed.

The issues raised then and which remain consistent practice as per the HPCSA are as follows:

- (a) The delay in processing the applications of South African trained doctors with foreign qualifications to write the board exams.
- (b) The unsatisfactory and unfair conditions under which the Board Assessments are conducted
- (c) Clarity on the new registration process for medical students and graduates under the new policy guidelines released in June 2018.

## **2.2. Universities whose curriculum is under review by the HPCSA [hereinafter 'Category E']**

In March 2019, the HPCSA informed graduates who were cleared to write the board examination in January 2019 that they would not be able to sit for their examination as the curriculum offered at their university of choice was under review.

The medical institutions where graduates obtained their qualifications is listed in the World Directory of Medical Schools. The qualifications obtained from such medical training facilities have been verified by the Education Commission for Foreign Medical Graduates (hereinafter the 'ECFMG') based in the United States. Ironically, ECFMG certification is also a pre-requisite for international medical graduates to sit for the United States Medical Licensing Examination (hereinafter the 'USMLE'). The list of affected universities are as follows:

- (a) Zhengzhou Medical University- China
- (b) Texila American University – Guyana
- (c) Anhui Medical University- China
- (d) Hebei North University –China
- (e) Shenyang Medical College- China
- (f) University of Medicine and Pharmacy “Grigore T Popa” –Romania.
- (g) North China University of Science and Technology- College of Medicine

On the 16<sup>th</sup> May 2019, The Association declared a grievance with the HPCSA on behalf of its members.

The Association threatened to institute legal proceedings against the HPCSA, when the HPCSA ignored the grievance.

The erstwhile CEO of the HPCSA sent correspondence to the Association requesting a stay in legal proceedings until parties have met to resolve the issue.

On the 16<sup>th</sup> August 2019 the Association met with the HPCSA where a decision was taken that the first twelve graduates listed as Applicants, in the proposed court action, will write the Board Examination in March 2020.

It was also decided that other similarly affected professionals in this category who had not made applications to write the board examinations, will be given the opportunity to apply to register in the first sitting of the board examination in 2020 or alternatively in the second sitting of the 2020 board exam.

However, the HPCSA once again backtracked on their decision and a court action was instituted on behalf of members affected under *Dr Sarvashni Chetty and 34 Others v The Health Professions Council of South Africa and one Other*.

Strangely, the issue for the HPCSA now is no longer the review of the curriculum offered at these affected universities. It now sought to settle is the matter as advised by their Counsel – Adv Khumalo below, thus completely ignoring the legal question upon which this action was instituted:

*Kindly be advised that we would like to settle this application by allowing the applicants to write and pass the board examination provided that you furnish us with the following documents in respect of each of the applicant which documents are still outstanding and as required by the regulations relating to the registration of persons who hold qualifications not prescribed –*

*(a) Certificate of internship;*

- (b) Certificate of good standing from the regulatory authority where the applicant trained as a medical practitioner; and*
- (c) Proof of registration with the regulatory authority where the applicant trained as a medical practitioner.*

This offer to settle is contrary to earlier HPCSA undertakings and, in our humble submission, once again an incorrect interpretation of the Regulations and thus given in bad faith since:

- The MOH issued a directive in 2018 which addressed, precisely, the question of the non-applicability of the above requirements with regard to internationally trained South African doctors. The affected 2018 batch was cleared to write the board examinations in May 2018. They are now in practice as medical interns.
- The Legal Team of the HPCSA is fully cognisant of the fact that South African trained doctors who obtained their qualifications abroad are not be able to produce a certificate of internship, nor proof of registration with the regulatory authority where the graduate trained as a medical practitioner, as they have not practiced medicine in the country where they obtained their qualification, nor in any other country for that matter. Given the delays experienced by most graduates when registering with the HPCSA, their certificates of good standing frequently expires, thereby further delaying their attempt to register.

At a meeting held on the 13<sup>th</sup> February 2020, the Association requested clarity from the HPCSA if the above requirements will apply to all foreign trained doctors and they replied in the affirmative.

This means that no South African doctor who obtained his/her degree abroad may apply for registration to practice as medical practitioner in South Africa.

SAITHPA cautioned the HPCSA, not to implement its interpretation of the requirements as it creates elements of biasness and/or discrimination. The above decision as applied by the HPCSA poses the following questions:

- (a) Is this the reason for the delay in releasing the January 2020 Osce results?
- (b) Why some graduates who obtained their qualifications at the same institutions as their peers were given the opportunity to write the board examinations while their peers were not allowed to do so?
- (c) Will those candidates who failed the last theory examination no longer will be able to write the board examination?
- (d) Very few candidates have been informed that they may write the examination at some future date, but no examination date has been released.
- (e) Does government support the actions of the HPCSA as to date the MOH has not deemed intervention necessary.

The above matter was raised in Parliament –and whilst an undertaking was given to address the issue –no action has been taken by the Minister of Health to address the concern which would, in effect, allow these graduates to make application to register for the board examinations.

Some of these graduates have now been waiting for more than three years to write their board examinations.

How will the State President explain to the citizens of this country, initiatives to import medical personnel when South African doctors have been waiting to write their board examinations for more than two years?

### **2.3. Delay in the release of the January 2020 Board Examination Results.**

To date the HPCSA has not given any reasonable explanation as to why it has delayed releasing the January 2020 Osce Results. Consequently graduates who qualified to register for internship in the mid-year cycle, were unable to do so.

## 2.4. USMLE/ SPEXI style examinations format in South Africa

The September 2019 board examination was deemed a 'pilot examination' supposedly testing the implementation of USMLE/ SPEXI style examinations format in South Africa.

The new format is called the Special Purpose Examination – International (SPEXI).

This is a six hour examination based on the same principles as the USMLE and comprises six multiple choice question banks, consisting of forty questions each. The materials presented in this examination is owned and copyrighted by the National Board of Medical Examiners (NBME) and the Federation of State Medical Boards of the United States (hereinafter the "FSMB"). This is the same Board that partners with the ECFMG in the formulation and testing of the USMLE.

The scope and content of the last examination was based on the practice of medicine in the USA. According to our graduates in order for them to pass the examination they studied the scope and content as tested in the United States Medical Licensing Examination ie the USMLE question banks, hence the conclusion drawn.

The HPCSA, nor the Minister of Health has to date not answered the following question:

*Does the South African legal framework authorise the HPCSA to conduct its board examinations based on the practice of medicine in the USA so as to enable successful candidates to practice USA-based-medicine under South African conditions?*

Further, the cost of engaging a foreign agency to conduct the theory part of the board examination must be assessed comparatively with the cost of the same initiative undertaken by South African Training Facilities. Wasteful expenditure should then be accounted for and those responsible brought to book.

Further, the HPCSA and the MOH have yet to pronounce on the question as to why medical practitioners who have passed the USMLE and are licensed to practice in the United States are not allowed to register as medical practitioners in South Africa under the non-examination track listing of medical facilities, given the scope and content of the last theory examination.

## **2.5. Section 25 of the Health Professions Act 56 of 1974 (hereinafter the 'HPA')**

No Minister of Health has neither deemed it necessary nor has sought to regulate registration to practice medicine as envisaged under section 25 of the HPA, post-apartheid. The current practice employed by the HPCSA grants exemption from the board examination only to candidates who have qualified from institutions recognised by the HPCSA from the so-called 'colonial countries' and related territories.

It is our contention that Section 25 (1)(2) of the HPA and regulation 2 of the *Regulations Relating to the Registration of Persons who Hold Qualifications Not Prescribed for Registration* (hereinafter the 'Regulations'), makes provision for the creation and/or extension of a seamless process of integration into the practice of medicine in South Africa as evidenced thus far with the non-examination track universities, recognised by the HPCSA.

Given the construct of section 25 why is such exemption being denied to graduates who obtained their qualifications from global institutions affiliated to the World Health Organisation and from whence a steady supply of doctors are making application to register as medical practitioners.

To date the Minister of Health has not responded to the question raised.

SAITHPA has called upon the MOH to review such legislation as custodian and initiator of the legal framework pertaining to the health sector with the object of streamlining the registration process for South African doctors who wish to practice their profession in service of their country.



The MOH has not responded to this call.

## **2.6. The HPCSA has still not complied a register of international medical institutions it recognises.**

Item 6 of the *Policy Guideline on the requirements for practice of medical professionals in South Africa*, June 2018, makes provision for such a list.

Such list will enable potential under-graduates to make an informed choice when choosing a tertiary medical institution.

## **2.7. Register of medical undergraduates studying abroad**

The HPCSA has not, as yet, initiated the compilation of a register of South African medical undergraduates studying abroad as envisaged in terms of item 6 of the *Policy Guideline on the requirements for practice of medical professionals in South Africa, June 2018*.

The office of the Registrar of the HPCSA as well as the MOH has failed to provide coherent and cogent reasons for the non- compilation of such register.

Such register of potential expertise will enable the Minister of Health to prepare for the integration of much needed skills to be absorbed into the Health sector.

## **2.8. Clinical Rotations offered to foreign graduates but not South African graduates**

It is of deep concern that SA Medical Institutions offer clinical rotations to foreign nationals but not South Africans who are registered with global medical training facilities as undergraduates.

Foreign nationals who make application to register for clinical rotation are compelled to register with the HPCSA for the duration of the rotation programme, as undergraduates.

It is our express contention that the clinical rotation year should be used to integrate internationally trained South African born undergraduates into the scope and practice of South African medicine, given that they also pay the same fees as any other undergraduate of foreign nationality who access the clinical rotation programme offered at medical training facilities in the country.

The Association has requested reasons for preference shown to foreign nationals who are placed in state sponsored training facilities, essentially funded by the South African tax payer, at the expense of our own citizens who ultimately, upon qualifying, make application to register and practice in South Africa as medical practitioners.

To date the MOH has not deemed the matter worthy of an answer.

## **2.9. Employment of foreign nationals into the internship programme/ public sector**

The Association is deeply concerned that an ever increasing number of foreign nationals are employed as medical personnel in the public sector whereas the gate keeping role of the HPCSA consistently creates challenges to keep out South Africans who obtained their medical qualifications abroad.

The MOH must provide a statistical record representing the employment of foreign nationals in the public sector, especially if such employment is funded by the South African taxpayer. The MOH must produce evidentiary support that substantiates the employment of foreign nationals over South Africans who possess the same skills or have the potential to learn such skills in a short time.

## **2.10. Marginalisation of individuals who have raised instances of corruption/ racism/ stereotyping**

To date a number of individual cases have been presented to the office of the Minister of Health and the HPCSA.

These cases remain unanswered, further marginalising these graduates who have at some stage exposed or attempted to expose some of the nefarious practices they had been encountered in their attempt to register for and pass the board examination or when placed as interns.

### **3. SAITHPA Demands:**

In order to promote and defend the interests of our members, SAITHPA calls on the State President:

#### **3.1. To constitute an urgent commission of enquiry which brief will be to investigate and thereafter make recommendations that will address:**

3.1.1. The inconsistent application of rules and regulations by the HPCSA, thus creating perceptions of biasness and discrimination, and thereby alienating young doctors who are, in fact, citizens of this country from pursuing their profession at a time when the country is in short supply of such skills.

3.1.2. Alleged acts of bribery, victimisation, racism and stereotyping by officials

3.1.3. Reasons for the delay in releasing the January 2020 Osce results.

3.1.4. Reasons for the non- compilation of a register of:

- Undergraduates studying abroad.
- Medical institutions recognised by the HPCSA and who fall in the examination track of international medical schools.
- Non-examination track international medical schools

- 3.1.5. The flexibility of the legal framework pertaining to the health sector with the object of accommodating a streamlined registration process for South African born doctors who wish to practice their profession in service of their country.
- 3.1.6. Reasons for preference shown to foreign nationals who are employed in state hospitals, essentially funded by the South African tax payer over South Africans who qualify to hold these posts.
- 3.1.7. A streamlined process to accommodate South African born undergraduates studying abroad to complete their clinical rotation programme at state funded medical facilities.
- 3.2.** That the State President initiates a country to country dialogue so that medical graduates who obtained their qualification abroad may be enabled to access their qualification records, given that they could not attend their graduation ceremonies and accept the medical degree conferred due to the lockdown of borders.

#### **4. Response timeline**

That the State President responds with a way forward to the concerns raised in this memorandum within thirty days of receipt of this memorandum and/or constitutes such commission of enquiry to carry out the investigations needed and make recommendations that will address the above concerns.

Prepared by the Legal Desk of SAITHPA and as edited and ratified by both parents and members.



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Adv D Govender

SAITHPA