



IMPLEMENTATION OF THE MEDICO-LEGAL DECLARATION



MINISTERIAL ADVISORY COMMITTEE ON MEDICO LITIGATION



DATE: _____



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Background



- On 9 and 10 March 2015 a Medico-Legal Summit was held with various delegates representing the public and private health sectors, medical profession and legal profession in order to discuss and find solutions to the medico-legal crisis facing the health system in South Africa.
- After the Medico-Legal Summit, the Minister appointed a Ministerial Task Team to consolidate all the recommendations of the various Commissions, and to compile a Declaration that will pave the way forward in resolving the problem.



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CONVERSION OF MINISTERIAL TASK TEAM TO AN ADVISORY COMMITTEE



- The Ministerial Task Team was converted into a Ministerial Advisory Committee and its mandate was extended to include implementation of the Declaration.
- Minister approved the conversion of the Ministerial Task Team to a Ministerial Advisory Committee on 20 June 2016.
- Members appointed to the Ministerial Advisory Committee are:
 - Judge N Claassen – Retired Judge
 - Prof G Lindeque - UP
 - Prof K Bolton - WITS
 - Prof A Dhai - WITS
 - Adv R van Zyl - SALRC
 - Dr M K Phalane - SAMA
 - Ms O Phahlane – State Attorney - Justice
 - Adv M Mantsho - Health
 - Dr T Carter – Health



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Declaration



- On 15 March 2016, the Minister approved and signed the Declaration developed by the Ministerial Task Team to pave the way to efficiently and effectively address medico-legal litigation challenges affecting the provision of health care services.
- The Declaration is categorised into:
 - Patient Safety;
 - Management and Administration; and
 - Legal.



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MINISTERIAL ADVISORY COMMITTEE



- The Ministerial Advisory Committee has an Implementation Plan that the Minister approved on 27 July 2016.



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IMPLEMENTATION PLAN



- The Implementation Plan focuses on the main areas of Patient Safety, Administration and Legal front and identifies immediate, medium and long term actions that should be executed to implement the Declaration.
- The Implementation Plan also identifies key roleplayers that will be responsible for the execution of the Declaration. These key roleplayers amongst others include:
 - Heads of Provincial Departments of Health.
 - Hospital CEOs.
 - Clinical Managers.
 - Managers for Medical Services.
 - Senior Management within the National Department of Health.
 - Registrars.
 - Clinical Expert Teams.
 - South African Law Reform Commission.
 - Departmental Legal Advisers (Legal Services).
 - Office of the State Attorney.



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IMPLEMENTATION PLAN ON PATIENT SAFETY



1. A culture of patient safety and medical accountability must be enforced. The champion of a patient safety culture in an institution is the head of the institution. In the case of hospitals, this is the CEO of the hospital. All hospital managers must implement the Patients' Rights Charter.
2. Clinical governance must be uniformly implemented. Morbidity and Mortality (M&M) reviews and clinical audits of all adverse events must be implemented immediately.
3. Development and implementation of safety checklists to ensure good quality health care services is compulsory with immediate effect.
4. There must be a renewed focus on patient safety in the education and training of all health professionals. The focus will include implementation of the National Core Standards (NCS) in all institutions. In this regard, the Office of Health Standards Compliance (OHSC) must monitor compliance.
5. A multidisciplinary approach is compulsory in functions such as ward rounds, M&M and other peer review meetings. Proper minutes and records of all M&M and peer review meetings must be prepared and preserved.



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IMPLEMENTATION PLAN ON PATIENT SAFETY continue



6. Following an adverse event, proper empathetic explanatory communication must be routine.
7. Continual patient safety campaigns must be conducted.
8. Emergency Medical Services (EMS) transport must always be available.
9. The referral of patients must occur at an early and appropriate time.
10. Avoid preventable safety failures by adhering to standard operating procedures and scope of practice.



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IMPLEMENTATION PLAN ON MANAGEMENT AND ADMINISTRATION



1. Reliable, complete and accurate record-keeping is essential. The safekeeping of high risk records must be prioritized, especially in disciplines where there are high levels of litigation. Electronic record keeping must be prioritized.
2. The proper management of medical records must be strictly enforced by clear Standard Operating Procedures (SOPs) and it is the responsibility of the CEO of each institution to eradicate unlawful destruction and/ or theft of medical records.
3. Applicable legislation regarding the destruction of medical records must be reviewed in order to take cognisance of the specific medical context, including the fact that prescription of claims in regard to children lapses after 18 years plus one.
4. Job requirements of hospital management, including CEOs, Clinical Managers, Nursing Managers and support services must be reviewed in light of the crisis in the escalation of medico-legal litigation.
5. Adequate and appropriate supervision must be ensured in health facilities.



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IMPLEMENTATION PLAN ON MANAGEMENT AND ADMINISTRATION continue



6. Early action must be taken upon receipt of letters of demand or complaints.
7. Open and honest communication, including the securing of valid informed consent, must be standard procedure.
8. Hospital administrators must be accountable for their actions.
9. Good management is essential and must ensure, positive staff morale.
10. Good management is essential and must ensure on-going training to improve capacity and skills.
11. Good management is essential and must ensure effective and efficient procurement.
12. Good management is essential and must ensure environmental safety.
13. Good management is essential and must ensure Human Resource management that ensures appropriate staff numbers and staff with appropriate competencies and knowledge, as well as employee wellness and disciplinary processes.



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IMPLEMENTATION PLAN ON MANAGEMENT AND ADMINISTRATION continue



14. District specialist health teams must be empowered to promote and enforce patient safety.
15. Hospital administrators must support patients with regard to complaint systems.
16. Hospital administrators must support patients with regard to hearing patients and community voices.
17. Hospital administrators must support patients with regard to supporting hospital boards as advocates for patients.
18. Hospital administrators must ensure training of staff on communication with patients to ensure improvement in listening, addressing patients in their language of choice and informed consent that ensures full disclosure, understanding and counseling.



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IMPLEMENTATION PLAN ON MANAGEMENT AND ADMINISTRATION continue



19. Hospital administrators must ensure training of staff to improve their competency and skills, thus ensuring that health professionals operate within their scope of practice.

20. Hospital administrators must ensure training of staff to ensure that all health professionals are trained to know and understand the ethical and legal requirements in healthcare.

21. Remunerative Work Outside the Public Service (RWOPS) must be actively managed.

22. Disciplinary proceedings must be promptly instituted against alleged offending healthcare workers and officials.



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IMPLEMENTATION PLAN ON LEGAL MATTERS (MEDIATION)



Mediation

Mediation must be implemented immediately consistent with the policy developed by the Department of Justice. Mediation of all disputes within state healthcare facilities and between state healthcare facilities and/or their personnel on the one hand and patients or members of the public on the other hand, should be made compulsory as the first step to the resolution of such disputes. Any party to any medico-legal dispute who refuses to submit to mediation or who, according to the mediator, fails to cooperate to successfully conclude any mediation process should be subject to predetermined sanctions.



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IMPLEMENTATION PLAN ON LEGAL MATTERS (LITIGATION STRATEGY)



Litigation strategy

1. Establishment of a dedicated medico litigation committee.
2. There must be prompt intervention and early resolution of pending litigation. Legal settlements should always be considered as a first option and must be mindful of costs.
3. Improve cooperation and relationships between the relevant national and provincial departments in preparation of medico-legal claims.
4. The litigants must be encouraged to save costs by appointing ONE expert for both parties.



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IMPLEMENTATION PLAN ON LEGAL MATTERS (LITIGATION STRATEGY) continues



5. The South African Social Security Agency (SASSA) must be informed promptly of all settlements by sending court orders to avoid double-dipping.
6. Report vexatious, frivolous and unethical conduct by attorneys to the applicable Law Society and/ or the Legal Ombudsman.
7. Invest in research of medico-legal matters to improve practice.
8. The capacity for improved quantum assessment must be developed for medico-legal claims.
9. The roles and functions of the statutory councils must be strengthened, reviewed and enforced.



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IMPLEMENTATION PLAN ON LEGAL MATTERS (SALRC INVESTIGATION)



Investigation into the establishment of the national health litigation authority

1. The SA Law Reform Commission (SALRC) is investigating the following:
 - 1.1 establishment of a national health litigation authority
 - 1.2 capping of claims
 - 1.3 review of the 'once and for all' common law rule
 - 1.4 undertaking of the provision of future medical costs



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THE END



THANK YOU



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