Medicolegal lessons from Medicolegal case law

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The right to refuse a privately funded patient

- Private practitioners are often faced with the decision of accepting or declining admission of a private patient (not a medical aid member) at private institutions.
- Very often, patients will volunteer to pay a prescribed amount for admission and initial care, but these costs can quickly skyrocket given the specific subsequent clinical treatment needed.
- Specialists are often left with the decision to either accept or decline such admissions, while having to take relevant legal directives into consideration.

Welkovics v Health Professions Council of South Africa (HPCSA)

- This is a recent landmark **Gauteng High Court** judgment delivered in **July 2025** that clarified the legal boundaries of when a doctor-patient relationship begins and reaffirmed a private practitioner's right to decline patients.
- The court successfully cleared the name of **Dr Norbert Welkovics**, a private general surgeon and intensivist, overturning a previous HPCSA ruling of unprofessional conduct.

Events leading up to the Incident

- A self-funded patient, Johannes Phillips, arrived at the Netcare Unitas Hospital at on 19 May 2020 casualty department after collapsing at home .
- He complained of shortness of breath, general body weakness, and fatigue.
- These symptoms had persisted for two days.
- He was known with COPD on home oxygen therapy, and also suffered from hypertension and diabetes.

- Dr Notrem (ER), treated the deceased and diagnosed him with heart and kidney failure.
- He recommended admission to high care or ICU for further investigations and treatment.
- Dr Notrem contacted the Dr Welkovics, the intensivist on call, telephonically at regarding the admission of the deceased.
- During the recorded telephone conversation, Dr Welkovics explicitly asked if it was an **immediate medical emergency or life-threatening**.
- The casualty doctor confirmed it was not.

- Because the patient was self-funded and the situation was deemed stable/non-emergent, Dr Welkovics **declined to accept the patient** for admission and gave no treatment instructions.
- The patient was later transferred to Steve Biko Academic Hospital, a public facility, where he sadly died the following day.

Dr Notrem – Emergency Department

- Testified that, following Dr Welkovics' refusal to admit the deceased, he contacted four other doctors at neighbouring private hospitals.
- None of them were willing to accept the deceased as a patient.
- He then communicated with two different doctors at Steve Biko Academic Hospital, whereafter arrangements were made for the deceased to be transferred to that facility.
- He confirmed that at no stage did he discuss the issue of costs with the appellant.
- He further stated that Mrs Sales had informed him that the family was in a position to cover the costs associated with the deceased's hospitalization.

Mr and Mrs Sales – the deceased's children

- Mr and Mrs Sales testified about the conversation they had with Dr Notrem regarding the fact that the deceased required admission to the ICU or high care.
- The costs were estimated to be between R100 000.00 and R200 000.00, which they indicated they could afford.
- Dr Notrem phoned the appellant regarding the deceased's admission at Netcare Unitas Hospital but Dr Welkovics refused to admit the deceased because he was self-funded.
- Proof was provided that they had over R5 million rands in the bank accounts.

Dr Welkovics

- Dr Welkovics testified that he declined to accept the deceased as a patient after satisfying himself that the case did not constitute an emergency.
- He stated that, had the case been an emergency, he would have proceeded to the casualty department to render assistance.
- He further indicated that he had worked with Dr Notrem for approximately 5-6 years and expressed confidence in his clinical judgment.

The Complaint and HPCSA Ruling

- Mrs Sales, the deceased's daughter, lodged a complaint with the HPCSA regarding the appellant's refusal to admit the deceased at Netcare Unitas Hospital.
- The HPCSA decided to charge Dr Welkovics based on the complaint by Mrs Sales.
- The **HPCSA Disciplinary Committee** found Dr Welkovics guilty of negligence/unprofessional conduct, penalising him with a **R100,000 fine** and a suspended **12-month suspension** from practice.

- The charge read as follows:
- “You are guilty of unprofessional conduct which when regard is had to your profession regarding section 1 of the Health Professions Act 54 of 1974, is unprofessional in that on 19 May 2020, in relation to Mr JA Le Roux Phillips, (the deceased patient) you acted in a manner that is not in accordance with the norms and standards of your profession in that:
- You were negligent as you failed to examine the patient prior to making a decision to refuse admission.”

The High Court Appeal Judgment (2025)

- Dr Welkovics appealed the decision to the Pretoria High Court.

Grounds for Appeal

- Appellant's right to decline to accept a private patient;
- No doctor-patient relationship came into existence between the appellant and the patient.
- The HPCSA ad hoc appeals committee erred when finding and confirming that the appellant was guilty of unprofessional conduct without making any finding that the appellant contravened any of the HPCSA ethical rules;
- The HPCSA ad hoc appeals committee erred when making reference to and applied foreign law, more specifically, the ethical rules, codes and principles relating to medical professionals as they apply in the United States of America, without providing any legal justification;
- The HPCSA ad hoc appeals committee erred and misdirected itself when failing to evaluate the evidence led at the PCC hearing in its totality.

Successful Appeal

- **The High Court completely overturned the HPCSA's finding** based on three core legal and ethical tenets:

1) No Doctor-Patient Relationship Existed

- The court ruled that merely discussing a case over the phone with another clinician does not establish a doctor-patient relationship.
- A relationship is only formed when a doctor takes active, overt steps to assume responsibility for a patient's care or issues treatment instructions.

2) Right to Refuse Private Patients

- In South Africa, private healthcare practitioners have a lawful right to decline to accept a patient, provided the refusal is exercised ethically and does not violate constitutional protections (such as unfair discrimination based on race).

3) Absence of an Emergency

- Section 27(3) of the South African Constitution dictates that no one may be refused *emergency* medical treatment.
- Because the casualty doctor explicitly stated the patient was stable and it was not an active emergency, Dr Welkovics was under no legal obligation to admit him

SUMMARY

- The landmark South African High Court case ***Welkovics v Health Professions Council of South Africa (HPCSA)* (2025)** established critical legal and ethical precedents regarding a private medical practitioner's right to refuse care.
- The court overturned an initial HPCSA ruling that had found private intensivist **Dr. Norbert Welkovics** guilty of unprofessional conduct for declining to admit a self-funded patient.
- The patient, who was stable but suffering from chronic conditions, was subsequently transferred to a public facility where he unfortunately passed away.

Legal and Medical Significance

- The *Welkovics* case serves as a crucial legal precedent for South African healthcare professionals.
- It clearly demarcates that **informal telephonic consultations between doctors do not legally bind the specialist to the patient**, protecting private specialists from liabilities unless they explicitly agree to take charge of the case.

MEDICOLEGAL LESSONS

Clear Boundaries on When the Doctor-Patient Relationship Begins

- The High Court stressed that **merely discussing a patient with another clinician does not establish a legal doctor-patient relationship**.
- A legal duty to treat only arises when a practitioner explicitly takes active steps to assume responsibility for that patient's care (e.g., providing treatment instructions or admitting them).
- Because Dr. Welkovics gave no clinical input or instructions during the phone call, no such relationship was established.

Private Doctors Have a Qualified Right to Refuse Patients

- Practitioners in private practice are **not legally or ethically obligated to accept every private or self-funded patient** who seeks care.
- A private doctor may lawfully decline admission or treatment, provided that:
- The patient's condition does not constitute an **immediate, life-threatening medical emergency**.
- The refusal is not based on **unconstitutional grounds of discrimination**(such as race, gender, or religion).

Emergency vs. Serious Conditions

- The case underscores the necessity of clear clinical communication.
- During the recorded consultation call, the casualty doctor explicitly confirmed to Dr. Welkovics that the patient had been stabilized and that the case was **not an immediate emergency**.
- Even if a patient's condition is clinically serious, it does not legally force a private practitioner’s hand unless it is an active emergency.

Professional Regulators Cannot Impose Arbitrary Liability

- The High Court clarified that while a decision to decline a patient may, in hindsight, be viewed as regrettable, it does not automatically equate to negligence or a breach of professional or ethical duties.
- This ruling protects private practitioners from arbitrary sanctions by the HPCSA when operating within their lawful rights.

