

HPCSA on psych scope of practice

The Health Professions Council of South Africa (HPCSA) has issued a statement clarifying the current situation on the regulations defining the scope of the profession for psychology.

Expanding the scope of practice

In 2011, the minister of health published amendments to earlier regulations (published in 2008), in an attempt to address numerous complaints made against psychologists, who had been practising outside the scope of practice of their registered category.



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The effect of the amendment was to:

- introduce two new scopes of practice to the psychologists' profession, namely forensic psychology and neuropsychology; and
- to define the individual scopes of practice for each registration category for psychologists.

At the time, there were only five registration categories, namely: clinical psychologist, counselling psychologist, educational psychologist, industrial psychologist and research psychologist.

The regulations codified the various functions that each registration category could lawfully perform within their respective scopes of practice. They also expanded the scope of practice for educational psychologists.

Court proceedings

During 2014, the Recognition of Life Long Learning in Psychology Action Group Alliance (ReLPAG) and the Justice Alliance of South Africa (JASA) instituted court proceedings to challenge the validity of the regulations, among other things.

After various interest groups had been admitted as friends of the court and had introduced new evidence into the proceedings, the minister was of the view that it was preferable to concede the merits of the review, based on narrow procedural defects, which had tainted the process that led to the promulgation of the regulations.

Agreement reached

On 14 November 2016, the minister, the Professional Board of Psychology (PBP), ReLPAG and JASA entered into an agreement, in terms of which:

- the court would declare the regulations invalid;
- the court would suspend the declaration of invalidity for 24 months to afford the minister, HPCSA and PBP an opportunity to correct the defects; and
- during those 24 months to oblige the HPCSA and PBP to consider, on a case-by-case basis, suspending pending disciplinary proceedings against psychologists, charged with practising outside the scope of practice of their registered category, until the regulations have been corrected.

That agreement was made an order of court on 14 November 2016. The practical consequences of the order are that all psychologists shall remain bound by the content of the regulations, despite the declaration of invalidity, for the 24-month period of suspension.

Psychologists registered to practise in particular registration categories, therefore, are obliged to regulate their conduct and practices in accordance with the scopes of practice of their respective registration categories, as defined in the regulations.

Status of existing disciplinary proceedings

If disciplinary proceedings have, as at 14 November 2016, already been brought against a psychologist for practising outside the scope of practice of his or her registered category and are still pending, then the PBP and HPCSA must, in each case, consider whether the alleged breach of the scope of practice warrants suspension of the disciplinary proceedings until such time the new regulations have been put in place.

However, the PBP and HPCSA are not obliged to suspend such disciplinary proceedings.

JASA press statement

It has come to the HPCSA's and PBP's attention that JASA issued a press statement on 15 November 2016, entitled: *A court victory for JASA and ReLPAG as the Cape High Court declares regulations limiting psychologists invalid medical aids now required to pay.*

In its press statement, JASA indicated that the regulations were declared invalid, in terms of the court order of 14 November 2016.

However, JASA conspicuously omitted to mention the fact that the declaration of invalidity was suspended for 24 months and, as a consequence, the regulations remain operative.

This omission misrepresents the true position, as the order of invalidity was not made with immediate effect.

Medical aid payments

JASA further stated that “[t]he Board of Healthcare Funders, the fifth respondents, has agreed to abide by the outcome of the case and consequently its members and the other medical aids, many of whom refuse to pay psychologists purportedly working outside the scope of practice, will need to resume making payments.”

This statement is also an incorrect portrayal of the legal position, insofar as it suggests that the declaration of invalidity obliges medical aids to pay psychologists, whose claims have been assessed as falling outside the scopes of practice of their registered categories.

That was not the effect of the order. The effect of the order was to oblige medical aids to assess all claims for psychological services against the regulations, which remain in place.

To the extent, however, that any psychologist wishes to dispute non-payment by a medical aid, he or she is free to challenge that decision in the appropriate forum.

Status quo

“All psychologists are cautioned against accepting JASA’s press statement at face value, and instead to have regard to the terms of the order of court itself.

“Psychologists are also reminded to regulate their conduct in accordance with the scopes of practice of their respective registration categories, as defined in the regulations, until new regulations have been published,” the HPCSA statement said.

Engagement with stakeholders will be held by the professional board in due course.

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