

South Africa healthcare leaders unite in call for review of culpable homicide law

Nine of South Africa's leading healthcare organisations have united to urge the Government to initiate a review into culpable homicide law and its application in a healthcare setting.

In a letter to the Minister of Justice and Correctional Services, Hon Ronald Lamola, the coalition said there is a very low threshold in South African law for blameworthiness when a patient dies while under medical care, which has resulted in errors of judgement in complex healthcare environments being criminalised, and healthcare professionals being convicted regardless of their intent.

The letter was signed by Medical Protection Society, Association of Surgeons of South Africa, Federation of South Africa Surgeons, Radiological Society of South Africa, South African Medical Association, South African Medico-Legal Association, South African Private Practitioners Forum, South African Society of Anaesthesiologists and South African Society of Obstetricians and Gynaecologists.

The joint letter calls for the review to be carried out by the South Africa Law Reform Commission, due to the complexity of criminal law in a healthcare setting and the importance of achieving a long-term solution for healthcare professionals and patients alike.

The letter says: "It is hard to see who benefits from the current system. As well as families losing a loved one through tragic circumstances, doctors risk losing their career and liberty, and the fear of criminal charges also has a negative knock-on effect on patient care. The current system stands in the way of patients receiving an early apology and a full explanation of events, and thereby denies closure.

"A recent survey of over 500 doctors conducted by the Medical Protection Society showed that almost 9 in 10 (88%) are concerned about facing an investigation following an adverse patient outcome during their career, and 90% think that the prospect of facing criminal investigation or charges impacts on their mental health. The survey also revealed that the prospect of criminal investigation means nearly one in two doctors in South Africa have considered leaving the profession. The reality of healthcare provision is that complications occur despite best intentions and care.

"This overwhelming response – across all specialties and regions – illustrates how widespread fear and concern is for doctors in the current climate in South Africa. Concerningly, 4 in 5 doctors surveyed think the criminal justice system in South Africa has an inadequate understanding of medical practice.

"A long-term solution is needed in terms of the wider problem of how criminal law is applied to healthcare practice. This is why we are calling on your Government to involve the South African Law Reform Commission in a review into the threshold for criminal charges brought against doctors acting in good faith when delivering healthcare.

"Healthcare professionals need to be held accountable, however, criminalising errors of judgement – particularly in this fast moving and complex healthcare environment – seems unreasonably severe. Criminalisation in the absence of any clear intention to cause harm is overly punitive, leaving healthcare professionals vulnerable to criminal charges. Lessons can be learned from other jurisdictions - for example, in Scotland, where charges are only brought against doctors if an act is proved to be intentional, reckless, or grossly careless.

"Our organisations are committed to the highest level of safety for all patients in South Africa. This will however require replacing the current culture of blame and fear with one of

learning, where healthcare professionals feel able to apologise and learn from mistakes, which will help to reduce the number of errors and thus enable progress on improving patient safety. When healthcare professionals are allowed and supported to learn from mistakes, lessons are learnt, and patients are better protected in the future.

“We appreciate the intricacy of these issues, and while they are difficult to resolve, their complexity only highlights how important it is that our healthcare workers have clarity from their leaders, and ultimately in law. Patients and clinicians want the same thing, for those in need to receive the best care.”

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