

The unwritten new practice rights of the traditional health practitioner as stipulated by the Traditional Health Practitioners Act No 22 (2007) of South Africa

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RESEARCH

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ABSTRACT

Background

In 2007, a practice directive was issued for the new legal entity *traditional health practitioner* with the promulgation of the Traditional Health Practitioners Act (No 22 of 2007) in the Republic of South Africa. Although the Act describes this new pathway in terms of various definitions, the future practice rights and impact on healthcare were left undefined and unwritten. To date the negative legal implications and career consequences that the Act has for the regulated health practitioners, have gone unnoticed. The derogation and degrading of their work domains and rights, seem of no concern.¹

Aims

The aim of the present study is to determine and describe the unwritten new practice rights of the *traditional health practitioner*.

Methods

This is an exploratory and descriptive study in line with the modern historical approach of investigation by means of a literature review. The emphasis is on using documentation such as articles, books and newspapers as primary resources to reflect on the *traditional health practitioner's* new unsaid and unwritten future practice rights.

Results

The future practice and services of traditional health practitioners seem to incorporate many new unwritten practice rights and activities, which is contrary to the Act's written intentions.

Conclusion

The new *traditional health practitioner's* future practice rights are legally comprehensive and masked. It holds serious consequences for the practices of the established healthcare professions.

Key Words

Allopathic, body-mind dichotomy, health establishment, holistic unity, mental-physical, legal entity, mental illness, physical health, well-being

What this study adds:

1. Information on this subject?

Limited information and guidelines are available on the future practice rights of traditional health practitioners, especially critical descriptions of the intentions of the Traditional Health Practitioners Act No 22.

2. What new information is offered in this study?

The study clearly describes the future unwritten practice rights of the *traditional health practitioner*.

3. The immediate implications for policy and practice?

There should be more thorough research on the future practice rights of the traditional practitioner in terms of Act No 22 (2007) and established healthcare practitioners must be educated on the negative implications this has for them.

Background

The new policy of 2007 to regulate traditional health practitioners with the Traditional Health Practitioners Act No 22 (2007) awarded these practitioners immense legal rights to practice. Some new activities, rights and privileges are clearly mapped out, others not. Before this Act there was no legal framework according to which to regulate and register traditional healers in South Africa. Training and education are non-existent, as well as an ethics code of professional conduct and a professional position as a practitioner in the established healthcare sector.¹

Although already promulgated in 2007, the Act has only been partially enacted in 2016. Its contents and intentions are largely unknown to established healthcare practitioners and the general public.¹

This outcome is that regulated practitioners do not always understand or have a correct legal interpretation of the future implications of these new practice rights for the healthcare establishment. The various definitions and accompanying descriptions have not been thoroughly analysed and relayed to the other pieces of healthcare legislations that govern the medicine, pharmacy, nursing and the allied professions. This ignorance can have serious consequences for the country's healthcare management and planning.¹

The aim of this study was to describe the new unwritten practice rights that can arise from the 2007 legislation on traditional healthcare.

Method

The research was done by means of a literature review. This method involves developing a view based on the available body of research. This approach is frequently used in modern history research where information is scant. The databases used were EBSCOHost, Sabinet online and various contemporary sources like newspapers for 2014, articles from 1980 to 2016, books for the period 1990 to

2013 and government documents covering the period 1992 to 2008. These documents were studied to reflect on the traditional health practitioner's new unwritten practice rights. The findings of the study are offered in narrative form.^{2,3}

Results

The holistic unity versus the body-mind dichotomy

The compilers of the Traditional Health Practitioners Act (No 22, 2007) attempted to assure regulated healthcare professions by means of different stipulations that the Act will not violate their existing practice rights and privileges when fully enacted. Three legal definitions, namely *traditional philosophy*, *traditional medicine* and *traditional health practice* are offered as a safeguard, with the prefix *traditional* as a prominent addition.¹

However, viewed on the whole, the Act seems to actually contradict this safeguard. The prominent use of the term *traditional* in the first part of the Act, while this adjective is largely missing in the second part, is an anomaly.¹

This contradiction is further aggravated by the misuse of the popular view of *traditional health practice* as a *holistic unity* that involves a holistic physical, spiritual and well-being approach to the human and his illnesses. Act No 22 (2007) shows that it underwrites a body-mind dichotomy. There is a clear description on the one hand of *physical illness* and of *mental illness* on the other hand in the discussion of the diagnosis and treatment approach. This practice differentiation most strikingly comes to the fore in the legal definition "*traditional medicine*" in Section 1 and Section 49(1) (b) of the Act¹. Other literature confirms this observation.^{4–6}

The traditional healers' new practice rights are in conflict with their customary holistic sickness approach to diagnosis and treatment. The holistic inclination sees the supernatural primary as the reason for illness. This used to be the main argument to regulate traditional healers, but traditional healers' practice rights have now been extended to meet the rights and privileges of regulated healthcare professions that base their approaches on a body-mind dichotomy. This outcome was unopposed, notwithstanding the fact that the qualifier *traditional* in the three legal definitions is supposed to limit the traditional health practitioner's rights to *traditional procedures* only.¹

The conjunction "*or*" instead of "*and*" to differentiate between *physical* and *mental* in the legal definition of *traditional medicine* of Sections 1 and 49(1) (b), changes the

emphasis of the stipulations regarding practice rights. The emphasis is completely different from the universally and traditionally accepted holistic descriptions of traditional healing that do not separate the *natural* from the *spiritual* or the *physical* from the *supernatural*.^{1,7}

The emphasis in the Act has changed the practitioner's traditional role as *diagnostician*. Traditionally, he or she was assumed to have received supernatural powers, either through heredity or from his ancestors, to identify reasons for unnatural illness and unfortunate events, and to mediate with the spirits about the wishes of the living.^{4,8,9}

The practice directive of *traditional philosophy* as legally defined in the Act stands in contrast to the new trend of exclusively physical diagnosis and the use of muti to treat illnesses directly and separately. This is not traditionally associated with the rights, traditions or skills of the South African traditional healer when viewed as a supernatural holistic unity. In contrast to custom, Section 49(1) (b) very selectively terminates the limitation "not to may and not to can" venture into the sole treatment of physical illness.^{4,8–12}

The delimitation of the holistic unity

Section 49(1) (b) not only nullifies the traditional healer's holistic practice uniqueness, but also quietly and selectively terminates in total the limitation of the prefix *traditional* in the legal descriptions of the Traditional Health Practitioners Act No 22 (2007).¹

It is important to revisit Section 49(1) (b) to understand how it violates the practice rights and privileges of the regulated health professions.¹

The specification **or physical health** and **or mental health** as separate practice entities and as specific new practice rights are prominent. There is not a single reference to *traditional* in Section 49(1) (b). Indeed, the traditional healer's infiltration into the modern healthcare sector is not even masked behind the prefix *traditional*, as was done in the earlier Sections of the Act.¹

These earlier references successfully distract the attention away from the Act's real intention, namely to declare the new legal entity, *traditional health practitioner*, a type of medical practitioner or medical doctor and to bring the healer as an equal of the medical doctor directly into the *health services* and *health establishments* of the country.¹

Other masked intentions of Act No 22, 2007

Two legal definitions, namely *health establishment* and *health services*, foreground the masked intention of the Traditional Health Practitioners Act No 22 (2007) to empower the *traditional health practitioner* within the formal healthcare sector.

The inclusion of the clause *health establishment* in the Act clearly provides the traditional healer with *direct entrance* to "may and can" practice in any public or private institution, facility, agency, building or place or part thereof, that provides health services.¹

This inclusion of the clause *health service* gives the traditional health practitioner the right and privilege to offer health services inside any of the above official health service establishments. This service can indeed include inpatient and outpatient treatment, diagnostic or therapeutic interventions, nursing and rehabilitative, palliative, convalescent and preventative health service.¹

The inclusion of the legal definition of the *Department of Health* in the Act aims to bring traditional health into the private and public health services and health establishments of South Africa. This is clearly part of a long-term political plan, which started in the 1960s.^{13–23}

This intention of the government was openly stated in public by a Deputy Minister of Health, Gwen Ramokgopa, in 2013 when she acknowledged the plan of the government to integrate traditional healers into the healthcare establishment. She confirmed that many primary healthcare facilities and hospitals are already working in collaboration with traditional health practitioners and that they are members of Clinic Committees, Hospital Boards, District Health Committees, Provincial and National Advisory Structures with government approval.²⁴

Ramokgopa's remark is in line with other government efforts from the 1990s onwards to topple the medical doctor from his central healthcare position by inserting various community healthcare workers, like traditional healers, into the system so that they are "on top" and "on tap".^{17–20, 25}

More new rights and entitlements

The limitations that are enforced in the first part of the Traditional Health Practitioners Act No 22 by means of the legal definitions *traditional medicine*, *traditional health practice* and *traditional philosophy* are virtually erased by three legal definitions. They are not qualified by the

adjective *traditional* and they are *health establishment*, *health service* and *Department of Health*.¹

This is amplified by Section 42(2), which opens the door to health services and establishments by providing for claims of payment to *traditional health practitioners* from Medical Schemes in terms of the Medical Schemes Act No 131 of 1998.^{1,26}

Section 44(2) states that no person other than a traditional health practitioner, registered in terms of the Traditional Health Practitioners Act No 22 (2007) and holding the necessary qualifications, is eligible for or entitled to hold any appointment to any establishment, institution, body, organization or association, whether public or private, if such appointment involves the performance of any act which only a *traditional health practitioner*, in terms of Act No 22 may perform for gain. This creates an open-door policy with regard to hospitals and other institutions. It also states that nothing in Section 44(2) precludes the training of traditional health practitioners or students under the supervision of a suitably qualified traditional health practitioner, or the employment in any hospital or similar institution of any person undergoing training with a view to registration in terms of the Traditional Health Practitioners Act No 22 under the supervision of a suitably qualified traditional health practitioner or other health professional.¹

The new status of the *traditional health practitioner* as a new kind of medical doctor with the annulment of the prefix *traditional* in various legal definitions and descriptions in the Traditional Health Practitioners Act No 22 (2007), is also reflected with Section 49, which puts in place various rights of practice. Included here are various unwritten practice rights. Section 49 has serious consequences for the regulated health professions and holds enormous risks for public health. It also discriminates against the healthcare professions such as psychologists, pharmacist and nurse by bestowing various practice rights on the *traditional health practitioner* that are totally denied to these professions.¹

Section 49 is further confirmation that government will merge the *traditional health practitioners* - with their comprehensive new written and unwritten rights to practice - as fast as possible with the public health sector and that they will not consider back-tracking on the Traditional Health Practitioners Act No 22 (2007) at all.^{1,17}

Is unprofessional conduct equal to professional ethics?

Government's official sanctioning of the rights of practice of the *traditional health practitioner* is further extended with

the definition of professional conduct. It is implied in the definition of *unprofessional conduct*, which reads: "any act or omission which is improper or disgraceful or dishonourable or unworthy if the traditional healer performs or do it".¹ This sanctioning is regardless of the clear lack of medical training and healthcare standards and ethics among traditional health practitioners.

The above legal definition is specifically applicable to the legal definition *traditional health practice* in Section 1 of the Traditional Health Practitioners Act No 22 of 2007 (read together with the three legal definitions *traditional health practitioner*, *traditional medicine* and *traditional philosophy*) to guide the traditional healer's ethics in his so called *traditional practice*.¹

Professional conduct, and its upkeep by the traditional healer, takes on new meaning given the goal of the Department of Health (DoH) to make traditional healing a full public health service as part of all the health services and in all the establishments of South Africa. This potential for misconduct is increased by Section 49's attempt to make the traditional healer a full member of the established group of regulated health professions and to grant the healer comprehensive rights and privileges of practice as part of the official health services and in establishments.¹

Improper conduct is eminent with the ±200 000 traditional healers waiting to be registered in the near future. They will legally be health professionals without any formal or recognized medical training, experience and skills, and a lack of exposure to modern health facilities. They will be free to heal under their new statutory registration. The pre-modern *traditional client* now becomes a *modern patient* within the structure of medical schemes and health establishments. The modern patient is in other words unwillingly transferred to the *traditional health practitioner's* pre-modern traditional health services at public and private facilities. This not only strengthens the traditional healer's new practice rights, but extends them beyond limit, specifically the unwritten rights.

The above imbalanced empowerment and extreme favouring of the *traditional health practitioner* in the country's health establishments, is in contrast with the trained homeopathic doctor, who is currently not included in the public health initiatives of the country and whose services and rights of practice are predominantly limited to the private healthcare sector.²⁷

The move of traditional health services to a modern, formal *in-patient* and *out-patient hospital setup* is very different from the present practice setup, practice rights and scope of services of the traditional healer. In the traditional context an *in-patient* lives at the traditional healer's home for the duration of treatment. The *out-patient* is visited by the traditional healer, and sometimes the healer stays at the patient's home to give treatment.⁴ It is probable that these pre-modern consultations, rituals and customs of the traditional healers will become part of the established modern healthcare tradition. Gumedé⁴ refers very honestly to this when he says: "Consultations take place not in the sterile meaningless environment of the hospital, but at the patient's home in the environment which is not only familiar but where the problem is and where the living dead will hear the incantations to their persons. They smell impepho and see the sacrificial beasts and roar approval as the goat bleats or the bull bellows when slaughtered" (p. 19). There are undoubtedly new unwritten practice rights that will be activated for the traditional healer, not only inside the formal healthcare setup, but also outside the formal healthcare setup, since the healer can enforce his practice rights on the modern patient.

The introduction of the practice services of the *traditional health practitioner* into the modern health practice and sector may possibly see the replacement of the white coat and stethoscope of the medical doctor in operating rooms and surgeries by the traditional health practitioner's pre-modern attire, consisting of bandoliers, a sangoma hairdo tagged with gall bladders, a head-umyeko of beads, a sangoma-stick, a "doctor's bag" consisting of horns filled with concoctions, a broom to sprinkle charm-medicine, an ox-tail as a diving ward and a skin bangle of a sacrificial beast to assure victory over illness.⁴

The above possibilities not only means that these healers can put thousands of innocent lives at health establishments in danger because of their lack of medical knowledge and skills, but also that the ethics and rules of the hospital and patient, as well as the rules prescribed for the healer, can be transgressed. The so-called "good" professional conduct of the *traditional health practitioner*, as envisaged in Section 1, can change very fast to "acts or omissions which is improper or disgraceful or dishonourable or unworthy for the traditional health practitioner", when the traditional healer enters the modern health establishments with his controversial health services, habits and customs, together with his new unwritten rights of practice.¹

Other new, exclusive practice rights and privileges

Section 49 further benefits the *traditional health practitioner* regarding his rights of practice, both legally defined and unwritten. It prohibits the regulated health professions from practicing in any of the physical and/or mental health areas of the traditional healer; identified with the misuse of the qualifier *traditional*. Only medical practitioners and dentists are exempted by Section 49(5).¹

The domain of practice bestowed on the traditional healer in terms of the above different rulings, especially Section 49, means that the *traditional health practitioner*, now with the title "doctor", can apply and prescribe, in terms of the unwritten rights, any form of traditional "medicine" or concoctions to patients, inside or outside health establishments.¹

The treatment of HIV/AIDS and cancer is now, in terms of Section 49(g), also in the practice domain of the *traditional health practitioners*, notwithstanding their lack of training and their bad reputation when it comes to treating these diseases.^{10,23,28} This situation will surely be exploited by the traditional healer.

Discussion

The above outcomes are good examples of how the compilers of the Traditional Health Practitioners Act No 22 (2007) misguided the practice rights of the traditional healer with faulty legal definitions that they derived from the different regulated health professions acts. The legal guidelines and support fail to compensate for the traditional healer's lack of scientific training, health principles and ethics, as well as his inability to offer trustworthy health practices. Notwithstanding this failure, the traditional healer's practice is legalized by the Act, resulting not only in a contamination of future legal and written practice rights, but also of the unwritten future practice rights.

The *traditional health practitioner*, in his effort to formulate a professional code of conduct and to gain a status as a respected health practitioner, failed, basically because the legal definition *traditional philosophy* is his main directive and guideline for future practice rights and his scope of practice and services. Diagnosis and treatment centre on the supernatural, including witchcraft. It is not a bio-medical science. Mental impairment is also a strong indicator during supernatural possession "to can and to may" practice as a traditional healer.^{4,7–9} This negative mental indicator, coupled with his future rights of practice, especially the unwritten rights, can have serious legal consequences for

the healthcare sector and the personal and general healthcare safety of patients.

The present professional incarceration of the *traditional health practitioner* because of his risky and dangerous practice-services allocated to him by the Traditional Health Practitioners Act No 22, had been anticipated by the eminent and far-sighted academic and psychiatrist/psychologist, Prof Jan Robbertze, when he warned South Africans nearly forty years ago:²⁹ “We are busy with a re-evaluation, I want, however, to warn that we do not lose perspective in the process. We are scientists and we must uphold our scientific traditions for the interest of our patients and the community. We cannot depend on hearsay information, anecdotes and pseudo-social and psychological speculations. In this respect we must especially guard that we do not give in to political pressure and throw our hands in the air and say: Let we give the mass for what they ask” (p. 1).

Strength and limitations

This study focuses on the masked intentions of the Traditional Health Practitioners Act No 22 (2007).

The decline in good governing principles and ethics in South Africa has spread to the healthcare sector. This will make the positive impact of the research minimal.

Conclusion

The new unwritten practice rights of the South African *traditional health practitioner* are well masked and very comprehensive. The impact of these rights can be much more devastating than the written rights professed and described by the legal definition *traditional philosophy* embedded in the Traditional Health Practitioners Act No 22 (2007). It empowers the traditional health practitioner with many new practice rights that can infringe on the practice domains of the pharmacist, nurse, medical doctor, psychiatrist, psychologist, chiropractor, homeopath, phytotherapist, naturopath and osteopath. It also has the potential for serious medical misconduct, even criminal behaviour, by the *traditional health practitioner*.

In light of the present official campaign to activate the Traditional Health Practitioners Act No 22 (2007), the *traditional health practitioner* surely will soon be fully active in terms of his new practice rights, written as well as unwritten, offering comprehensive practice services. People may take up these new practice rights gradually, or changes can come fast, depending on the future political climate of South Africa. This outcome spells disaster for the

established healthcare practitioners, healthcare sector and especially the patients using public healthcare services.

The eagle has landed in South Africa in 2007, loud and clear. This country's health establishment must take note of it.

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