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A framework for ethical decision making in occupational health

INTRODUCTION

According to the Professional Guidelines¹ of the Health Professions Council of South Africa (HPCSA): "To be a health care practitioner requires a life-long commitment to good, professional and ethical practices and an overriding dedication to the good of one's fellow humans and

society. In essence, the practice of medicine, dentistry and the medical sciences is a moral enterprise."

The South African Society of Occupational Medicine – SASOM, Guidelines on Ethical and Professional Conduct² state: "The occupational health practitioner should recognise where conflicts may arise regarding their responsibilities to the:

- Individual patients under their care,
- Other workers in the workplace,
- Employers,
- General public,
- State and legislation."

A MODEL OF ETHICAL REASONING

The HPCSA Guidelines¹ outline the four steps for ethical reasoning:

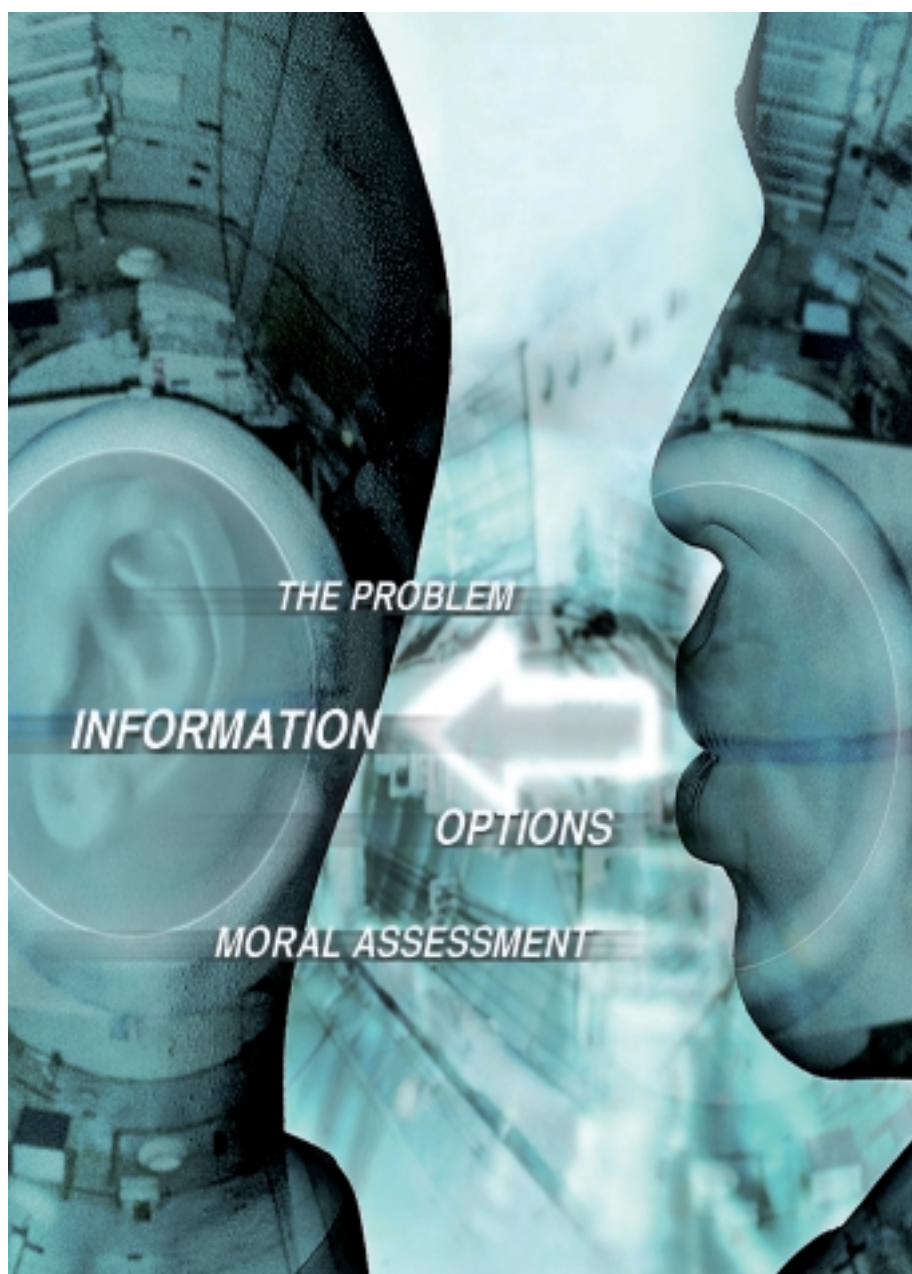
- "The problem: Formulate the problem. Is there a better way of understanding it?"
- Information: Gather all the relevant (clinical, personal, social, etc.) data.
- Options: Consider all reasonable options, choices or actions in the circumstances.
- Moral assessment: Weigh the ethical content of each option by asking:
 - What are the likely consequences of each option?
 - What are the most important values, duties and rights?
 - Which weighs the heaviest?
 - What are the weaknesses of your views?
 - How would you want to be treated in the circumstances of the case? That is apply the Golden Rule."

The following can be added:

- Select and implement the optimal option.
- Evaluate the outcome(s).

Occupational health staff frequently deal with the interlinked ethical dilemmas surrounding:

- Confidentiality.
- Fitness for work and/or disability/ill health retirement.
- Dual loyalties.



EXAMPLE 1

HISTORY

A 35-year-old long distance truck driver with 10 years of service with the company has had 50 days sick leave during the past year from respiratory tract infections and diarrhoea. In addition, he has had a minor accident.

His manager wants to know:

- What's causing his health problems?
- If he is fit to continue working or should an application be made to his provident fund for a disability benefit?

on the road on account of fatigue.

- Losing my reputation for giving bad advice?
- 1.2 Do I declare him unfit for his own occupation and:
- Ask the company to investigate suitable alternative work for him; or
 - If no suitable work is available, apply for a disability benefit through his provident fund?
- 1.3 How do I deal with his denial as regards investigations and treatment for HIV/AIDS?
- 1.4 How do I deal with the issue of confidentiality with his:
- manager;
 - wife/partner; and
 - provident fund?

“The occupational health practitioner should recognise where conflicts may arise regarding their responsibilities...” (SASOM)

EXAMINATION

A thin individual who weighs 52 kg (he claims he used to weigh 68 kg). There is a generalised rash, oral thrush and hairy leukoplakia. There is no lymphadenopathy.

His respiratory system is clinically clear.

He is fully conscious and orientated. His central and peripheral nervous systems are intact.

INVESTIGATIONS

White cell count – $3,0 \times 10^9/\text{litre}$ (Normal = $4.0 - 12.0$).

ESR – 90 mm/hour (Normal = 1 – 30).

Chest X-ray – Reported as normal.

Sputa for acid fast bacilli (AFBs) – Nil.

Clinically, he has signs and symptoms of AIDS. The patient, however, refuses an HIV ELISA antibody test despite two counselling sessions.

APPLYING THE MODEL OF ETHICAL REASONING

- (1) Formulate the problem.
- (2) Gather relevant information.
- (3) Consider all options.
- (4) Ethical assessment – weigh the ethical content of each option against laws, codes and previous cases.

1. Formulate the problem

- 1.1 Should I declare him fit for work but risk:
- Him losing his job and his livelihood on account of excessive sick leave.
 - Becoming a danger to himself and others

2. Gather the relevant information

- 2.1 What do the Code of Ethics (HPCSA, SASOM) say about:
- Medical ethics principles.
 - Informed consent.
 - Patient participation.
- 2.2 What legal aspects do I need to consider such as the Labour Relations Act and Employment Equity Act?
- 2.3 Does the company have a policy/code of good practice on HIV/AIDS or other chronic and life threatening



conditions that covers:

- Performance management.
- Confidentiality.
- Non-discrimination.
- Counselling.
- Benefits including:
 - o Sick leave.
 - o Treatment including antiretroviral medication.
 - o Incapacity/disability benefits via retirement/provident fund?

2.4 How has this policy been applied in the past?

2.5 What are the provident fund rules regarding incapacity/disability benefits?

Medical ethics principles^{1,2}

(1) Autonomy

This is the right of the individual to make a free choice based on full information.

(2) Non-maleficence

Do not harm or act against the best interests of the patient.

(3) Beneficence

This means acting in the best interests of the patient.

(4) Justice

Treat all individuals and groups in an impartial, fair and just manner.

Informed consent¹

1. Give your patients the information they ask for or need about their condition, its treatment and prognosis.
2. Give information to your patients in the way they can best understand it.
3. Apply the principle of informed consent on an ongoing basis.

Confidentiality

The SASOM Guidelines explain confidentiality as follows²:

“Confidentiality and disclosure to third parties

The reasons for observing confidentiality are:

- **Confidentiality is essential to the clinician-patient relationship and represents one of the tenets of medical ethics.**
- **The duty of confidentiality exists both under the council rules of professional ethics for doctors and nurses as well as common law.**
- **Potential for discrimination, victimisation or harassment of the employee.**
- **Divulging information without consent for release of information relate to:**
 - **Why the information needs to be divulged.**
 - **What information will be given and**
 - **To whom.**
 - **What action or consequences may follow.**

Disclosure with consent

Disclosure of clinical information about an employee cannot be divulged to third parties unless written consent has been obtained. By informed consent one understands that the person is fully aware of the reasons, the intended consequences, the risks and benefits of the disclosure, agrees to such disclosure, and is able to make such a decision without coercion or fear of adverse repercussions.

Third parties would include management, co-workers, legal representatives, audit and safety personnel.”

Disclosure without consent

Disclosure to a third party against the employee’s wishes can only take place in exceptional circumstances such as when a person is placing himself or other people at risk of death or serious injury. For example, if the physician discovered that a company vehicle driver had

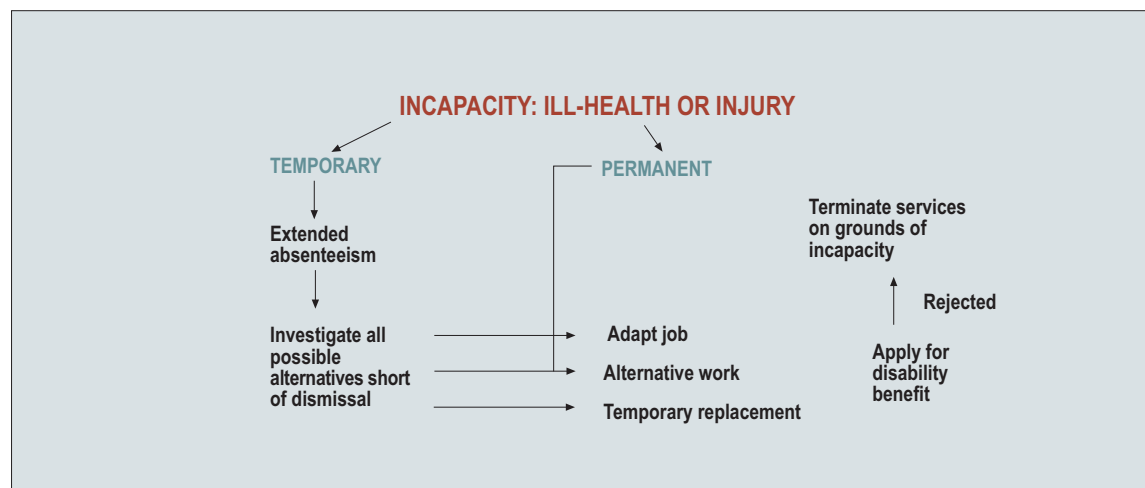


Figure 1. Labour Relations Act Schedule 8: Code of Good Practice – Dismissal

developed a condition that was likely to be a danger to other employees or the public.

Disclosure without the employee's consent can only take place if:

- A third party is at risk of death or serious injury,
- The employee, after counselling, does not inform the third party,

are there any exclusions for drivers unless they are unable to perform any occupation?

3. Consider all options

- *Continue working.*

As mentioned previously, he is unfit to perform his current duties, and his condition will deteriorate unless he

"The HPCSA Guidelines outline the four steps for ethical reasoning"

- The doctor or nurse then informs the employee that he/she intends breaking confidentiality.

Labour Relations Act ³

The Act prohibits unfair discrimination and protects employees against arbitrary dismissal. It therefore protects employees from being dismissed merely on HIV status and from being discriminated against with regard to employee benefits, staff training, as well as other work-related opportunities.

The Labour Relations Act – LRA recognises three grounds upon which an employee's employment may be terminated:

- Misconduct.
- Operational requirements.
- Incapacity.

Schedule 8 contains the Code of Good Practice:

"Incapacity on the grounds of ill-health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability." (See Figure 1.)

Incapacity/disability benefits

The provident/retirement fund rules should be checked regarding:

- Is there a waiting period e.g. three months, before benefits become available,
- Is there "Temporary Disability" for "Own Occupation" –

receives appropriate care and treatment.


- *Declare him temporarily disabled for his own occupation.*

The rationale for this is:

- If his provident fund accepts your recommendation, he will still receive an income.
- With time, he should become well enough to resume his normal duties, if he receives appropriate treatment.

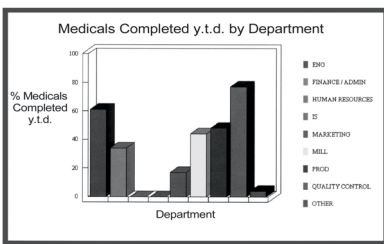
- *Denial.*

This may require a number of consultations, or even referral to a centre of expertise or an Employee Assistance Programme (EAP).



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Department	% Medicals Completed y.t.d.
INFO	~10
FINANCE/ADMIN	~10
HUMAN RESOURCES	~10
IS	~10
MARKETING	~10
MILL	~10
PROD	~10
QUALITY CONTROL	~10
OTHER	~10

- € Windows-based Computer Software Program
- € For Occupational Health/Primary Health Clinic
- € Daybook as central program feature
- € Injury/Disease on Duty
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- € Comprehensive records, reports, graphs, statistics
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Medical Consultant : Dr. Greville Wood

- *Confidentiality.*

The manager or company does not need to be told a diagnosis, but they do need to know that he is currently unfit to work and that an application should be made for a disability benefit through his provident fund, should no suitable alternative work be available.

You can also tell the company that you will send your medical report directly to the insurer of the provident fund. The insurer requires relevant information that includes:

- a diagnosis;
- whether treatment has been optimised;
- the prognosis;
- what the person can and cannot do; and
- whether there is a psychological overlay.

The patient's consent to divulge this information is required.

The HPCSA Professional Guidelines¹ state: "Disclosures without consent to employers, insurance companies, or any other third party, can be justified only in exceptional circumstances, for example, when they are necessary to protect others from risk of death or serious harm."

The HPCSA Professional Guidelines¹ also note that: "For example, our duties to our patients may compete with our duties to our employer. Or our duty to respect a patient's confidentiality may clash with our duty to protect innocent third parties from harm (HIV/AIDS examples are particularly perplexing). These are instances of conflicts of interest or dual loyalties."

4. Ethical assessment

This example demonstrates the complexities that occupational health practitioners face regarding dual loyalties.

(1) Autonomy

He has a right to refuse medical investigations, treatment or for information to be divulged to third parties. He is however, given all the relevant information about the proposed course of action and consequences both positive and negative that may result. Some insurance companies may reject this application as treatment has not been optimised.

His health status should be followed up on a regular basis.

(2) Non-maleficence

The courses of action chosen aim to:

- Prevent unfair discrimination.
- Prevent loss of income.

(3) Beneficence

- The ultimate aim is to improve this individual's health

status and prolong his quality and duration of life through appropriate care and treatment including antiretroviral medication.

- As a result of this, he should be able to resume his normal duties in due course.

(4) Justice

The courses of action chosen were to ensure dignity, confidentiality and participation in his own health care.

EXAMPLE 2

You have recently been appointed as the occupational medicine practitioner at a factory that recycles lead products that has paid scant attention to occupational health in the past. One of the employees has a blood lead level of 103 µg/100 ml. The Lead Regulations, 2001⁴ state that an employee is unfit for work in a lead area when the blood lead concentration is more than 60 µg/100 ml. He does not want to be removed from the lead area or for the result to be reported to the Department of Labour as he is concerned that he may lose his job.

APPLYING THE MODEL OF ETHICAL REASONING

1. Formulate the problem

1.1 Legislation requires removal from lead exposure, yet the individual is concerned about losing his livelihood – why does he believe this?

2. Gather relevant information

2.1 Is the result accurate? Repeat the test and ensure that an accredited laboratory is used.

2.2 Is this an isolated case, or do other workers also have elevated results indicating a generalised problem of lead exposure?

2.3 What are the workplace conditions like as regards lead exposure, ventilation, housekeeping and occupational hygiene measurements and can they account for the abnormal result?

2.4 Has information and training been given to ensure that all employees have a thorough knowledge of the provisions of the regulations?

2.5 Is there an effective Health and Safety Committee in place?

2.6 How has the company dealt with similar cases previously?

2.7 Is the industrial relations climate one of trust or fear?

3. Consider all options

3.1 Present the facts (initially without the name) to the management of the company and agree a course of action that includes:

- Full compliance with the relevant health and safety legislation.

“In medical surveillance there may be a conflict between ethics and the law”

– No employee will lose their job or suffer a cut in pay in the event of being removed from a lead zone.

3.2 Assess and implement established occupational health practices where necessary including:

- Risk assessment
 - Assessment of potential exposure in conjunction with the Health and Safety Committee and representatives.
 - Air monitoring.
- Control measures including lead substitution, enclosure of the premises or local extraction ventilation.
- Workers are adequately and comprehensively informed of the hazards and precautions to be taken.

3.3 Clinical examination of the individual for signs and symptoms of lead poisoning including anaemia and neurological problems.

3.4 Involve the Health and Safety Representatives.

3.5 As regards the individual concerned:

- Address his fears and concerns.
- Explain the necessity for him to be temporarily removed from the lead area to prevent adverse health effects and how to minimise future exposure to lead.
- Consider a submission for compensation under Schedule 3 of the Compensation for Occupational Injuries and Diseases Act.⁵

4. Ethical assessment

This case illustrates many of the points outlined in the International Commission on Occupational Health – ICOH Code of Ethics – Updated 2002⁶ including:

- “The primary aim of occupational health practice is to safeguard and promote the health of workers and their access to employment. In pursuing this aim, occupational health professionals must use validated methods of risk evaluation, propose effective preventive measures and follow up their implementation.”
- “Emphasis on prevention and prompt action.”
- “Health Surveillance.

The relevance and validity of these methods and procedures must be assessed. The surveillance must be carried out with the informed consent of the workers.

The potentially positive and negative consequences of participation in screening and health surveillance programmes should be discussed as part of the consent process.”

In addition the general principles have been applied of:

(1) Autonomy

The right of the individual to make a free choice based on full information about:

- medical surveillance; and
- being removed from the lead area.

(2) Non-maleficence

This is ensuring that no harm is done to his health or livelihood.

(3) Beneficence

This relates to attempting to improve workplace conditions in general.

(4) Justice

In medical surveillance there may be a conflict between ethics and the law. For example, this may occur when legislation stipulates that certain investigations are required but the worker refuses to give consent for these. In such instances every effort must be made to address concerns. In extreme cases and as a last resort, companies have resorted to disciplinary measures.

In summary, occupational health practitioners need to apply their minds as regards ethical dilemmas using the above framework and be able to defend their course of action.

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