

# Is there a foundation in South African legislation to require students to disclose their academic status to patients when involved in their care?

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Student involvement in patient care has been debated for many decades. There is an increasing body of literature calling for greater respect for patients' rights in a teaching environment. South African legislation already gives patients certain rights, including the right to non-medical information such as the costs of procedures. This paper analyses pertinent international guidelines and South African legislation to ascertain whether the existing rights of patients extend to the teaching environment. It is concluded that patients have a right to informed consent in every aspect of healthcare, including student involvement.

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Using patients in the training of healthcare students is a deep-rooted practice,<sup>[1-3]</sup> and contact with patients is one of the requirements for medical training of accrediting/regulatory bodies such as the World Federation for Medical Education (WFME).<sup>[4]</sup> Nevertheless,

the WFME has no guidelines for student conduct related to patient care. There are no South African (SA) guidelines that are specific to healthcare students. The Health Professions Council of South Africa (HPCSA), while registering students in all healthcare professions except nursing and pharmacology/pharmacy, does not have a codified set of ethical rules of conduct for students who interact with patients for educational purposes (e.g. taking the patient's history, drawing blood or other fluids, and performing or assisting with procedures). There are some international guidelines, such as those of the American Medical Association (AMA) and the Health and Care Professions Council of the United Kingdom (HCPC), but even internationally, regulation of students' conduct in terms of patient management is inconsistent. In this paper, we review and analyse the current situation regarding patient autonomy and student training. We recommend that students should disclose their academic status when interacting with patients for educational purposes.

## Patient autonomy: Ethics and the law

An important ethical concern related to student involvement in patient care that is frequently raised in the literature centres around respecting patients' autonomy and obtaining informed consent.<sup>[5-7]</sup> It is a well-established principle in biomedical ethics that patients' autonomy should be respected.<sup>[8]</sup> Such respect requires healthcare practitioners to give the patient information regarding the medical condition with which he/she has been diagnosed, to inform him/her of all possible

treatment options available together with their inherent risks, and to respect his/her right to refuse treatment.<sup>[8,9]</sup>

Although few studies on students' admission of their academic status to patients have been conducted, the international literature has highlighted the need for ethical guidelines when students are involved in patient management. Studies conducted in Turkey<sup>[10]</sup> and Jamaica<sup>[11]</sup> showed that patients often do not know the academic status of the people involved in their care, and that they would want to be informed of student involvement. In fact, the Turkish study indicates that some patients would even allow students to perform procedures on them when they were doing so for the first time, if the students would only ask.<sup>[10]</sup> Alarmingly, Beatty and Lewis<sup>[12]</sup> reported that all the medical students who participated in their 1992 study at the University of Connecticut had been introduced to patients as 'doctor' at some point in their academic career, and 5% of the participants had introduced themselves to patients as 'doctor'. Beatty and Lewis suggest that one reason for this misrepresentation is that students are afraid patients would not consent to their involvement in patient management if they knew the students' academic status.<sup>[12]</sup> A study by McLean and Naidoo<sup>[13]</sup> revealed that SA medical students have a similar fear. Interestingly, patients also have fears related to student practice – that refusal to allow student involvement will result in ill-treatment.<sup>[10]</sup>

Patient autonomy, and specifically the right to make an informed decision, which is impossible if a patient is misled or not given all the necessary information, has been affirmed by the SA courts on a number of occasions, such as in the cases of *Richter and Another v Estate Hammann*<sup>[14]</sup> and *Castell v de Greef*.<sup>[15]</sup> More recent cases, such as *Castell v de Greef*,<sup>[15]</sup> advocated the use of the 'prudent patient' standard, a higher standard than the previously used 'prudent doctor'

standard, which means that the patient needs to fully comprehend the extent of the risks involved in the procedure to which he/she is consenting (i.e. needs to be informed of the material risks involved in the treatment/procedure) in order to give informed consent. In this case (at 426) it was held that material risk is what a reasonable person in the plaintiff's position would have considered significant (and therefore necessary to declare), or what the physician ought reasonably to have known that the specific patient upon whom he/she was about to perform a surgical procedure would have considered noteworthy enough to necessitate disclosure,<sup>[15]</sup> hence the term prudent patient standard.

Although the prudent patient standard is now considered to be the more appropriate test to apply, because of its recognition of patient autonomy, the courts have been inconsistent in its application. This is evidenced by the more recent case of *Louwrens v Oldwage*,<sup>[16]</sup> where the court again applied the prudent doctor standard (a standard widely criticised for denying a patient's right to self-determination<sup>[9]</sup>). This has caused confusion.

It is important to note that both the standards applied by the courts when deciding about informed consent relate to the provision of medical information.<sup>[14-16]</sup> However, patients increasingly require and are entitled to non-medical information such as the costs related to procedures (in terms of section 6(1)(c) of the National Health Act (NHA)<sup>[17]</sup> and item 2.8 of the National Patients' Rights Charter<sup>[18]</sup>).

Provision of healthcare services in SA is regulated by legislation, including the Constitution of the Republic of South Africa,<sup>[19]</sup> the NHA,<sup>[17]</sup> the Mental Health Care Act (MHCA),<sup>[20]</sup> the Health Professions Act (HPA)<sup>[21]</sup> as amended, and the regulations and policies of the HPCSA.

Unfortunately the definitions in the NHA<sup>[17]</sup> and the MHCA<sup>[20]</sup> provide no enlightenment on the role of healthcare students in healthcare service provision. This paper therefore analyses the relevant legislation to examine how much protection it provides patients, to establish whether this protection creates a duty for students to disclose their academic status to patients when involved in their care, and to formulate guidelines for student involvement in patient care. Although some psychiatric hospitals, e.g. Weskoppies and Sterkfontein hospitals, are teaching hospitals, the MHCA<sup>[20]</sup> does not address service provision by practitioners in training at all. Importantly, the MHCA,<sup>[20]</sup> which specifically regulates mental healthcare service provision, does not have similar provisions regarding disclosure to those of the NHA<sup>[17]</sup> and will therefore not be included in the analysis and discussion.

## International best-practice guidelines

Internationally, there has been a wide call for ethical guidelines regarding patient involvement in student training.<sup>[10,11]</sup> Despite this, few international regulatory bodies have taken up the task of formulating such guidelines. For the purposes of this paper, the guidelines published by the AMA<sup>[22]</sup> and the HCPC,<sup>[23]</sup> and the set of policy guidelines developed by St Bartholomew's and the Royal London School of Medicine and Dentistry in 1996, available on the *British Medical Journal* website (*BMJ* guidelines),<sup>[24]</sup> were analysed. Although these are not the only existing international guidelines, others were not considered because they were too fragmented (e.g. the guidelines proposed by the General Medical Council), applied to practice situations too dissimilar to SA, or applied to populations

that in SA already have specific rules pertaining to them (e.g. the Canadian Paediatric Society's position statement on the participation of children in medical education).

The guidelines that were considered are not uniform. The AMA guidelines<sup>[22]</sup> consist of three items, whereas the HCPC guidelines<sup>[23]</sup> contain 13 guidelines with sub-items. The *BMJ* policy<sup>[24]</sup> consists of seven points. The AMA and *BMJ* guidelines emphasise that supervisors and students are responsible for ensuring that students practise ethically,<sup>[22,24]</sup> whereas the HCPC places the onus on the student.<sup>[23]</sup> The AMA appears to approach its guidelines from a patients' rights perspective,<sup>[22]</sup> whereas the HCPC guidelines are presented from a student conduct perspective.<sup>[23]</sup> The *BMJ* policy further differs from the AMA and HCPC guidelines in that it is aimed at regulating situations where patients participate in clinical training purely for educational purposes that are not aligned with their treatment.<sup>[24]</sup>

The provisions of these guidelines/policies can be grouped under five ethical and professional principles, i.e. informed consent, benefiting the patient, acting in the patient's best interests, confidentiality and honesty.

## Informed consent

The AMA guidelines require that patients are informed of the identity and educational status of everyone who is involved in their care.<sup>[22]</sup> The *BMJ* guidelines state that patients should know that participation in clinical education is voluntary and that they can refuse to participate.<sup>[24]</sup> All three sets of guidelines indicate that patients have the right to choose their service provider and therefore to choose to be treated by a qualified practitioner.<sup>[22-24]</sup>

The *BMJ* guidelines prescribe that verbal consent is sufficient to allow student participation, except in those instances where students would perform actions while the patient is anaesthetised. In those cases, written consent should be obtained and kept in the patient's file. Where verbal consent was obtained, the fact that the consent was obtained must be recorded in the file.<sup>[24]</sup>

## Benefiting the patient

The *BMJ* and AMA guidelines differ as to whether student involvement per se benefits the patient. Where the *BMJ* policy views student participation as purely educational,<sup>[24]</sup> the AMA guidelines indicate that student involvement results in 'integrated care'<sup>[25]</sup> which benefits the patient. Importantly, the *BMJ* guidelines emphasise that patients should clearly understand that non-participation in clinical education will not compromise their care.<sup>[24]</sup>

## Acting in the best interests of the patient

Students should act in the best interests of their patients by:

- Respecting a patient's right not to participate in clinical training.<sup>[24]</sup>
- Treating everyone equally and not abusing or exploiting their relationships with patients.<sup>[23]</sup>
- Protecting patients' dignity by not performing potentially embarrassing examinations (embarrassing either because of the nature of the examination or the number of students involved) without patients' express (verbal) consent.<sup>[24]</sup>
- Acting within the limits of their education and training:<sup>[23]</sup>
  - Students should ask for help from their supervisor or someone from the clinical placement.<sup>[23]</sup>

- Students should only perform unsupervised tasks if they believe they have adequate skills to do so,<sup>[23]</sup> or if there is 'recorded evidence of competence' (which is not defined).<sup>[24]</sup>
- Not exposing patients to danger.<sup>[23]</sup>
- Students should deal safely with the potential of infection.<sup>[23]</sup>
- When students have serious health-related difficulties they should limit or cease their studies, especially when impairments in judgement may result, as this could pose a risk to patients.<sup>[23]</sup>
- Keeping patients' records up to date and ensuring that the information they add to a patient's file is correct and clear.<sup>[23]</sup>

### Confidentiality

All the patient's information is confidential.<sup>[23,24]</sup> Information obtained from patients should only be used for the purposes for which it was obtained. However, patients should be informed that students may be required to disclose information obtained from a patient to a responsible clinical supervisor, especially when others may be at risk.<sup>[23,24]</sup>

### Honesty

The AMA and the HCPC emphasise that students (and supervisors) should be clear about the educational status of students and not inflate students' skills.<sup>[22,23]</sup> Students should be referred to by their correct titles,<sup>[22,24]</sup> and confusing<sup>[22]</sup> or misleading titles such as 'young doctors', 'my colleagues' or 'assistants' may not be used.<sup>[24]</sup>

Because the HCPC guidelines are student-centred, aspects related to plagiarism and academic honesty are included in its document.<sup>[23]</sup> These are beyond the purview of this article and will not be discussed.

Whether a student-centred or a patient-centred approach is followed, the international instruments appear to agree that students should disclose their academic status to patients when involved in their care. An analysis of the SA position is necessary to establish whether the SA context may also require disclosure of academic status to patients.

## SA ethical and legal instruments

### The Constitution of the Republic of South Africa<sup>[19]</sup>

In terms of the Constitution,<sup>[19]</sup> the following rights pertaining to autonomy and self-determination in the healthcare context are enshrined in the Bill of Rights:

- The right to inherent dignity and the right to the protection and respect of dignity (section 10)
- The right to freedom and security of the person, including the rights to be free from any form of violence from either public or private sources (section 12(1)(c)) and not to undergo any form of torture (section 12(1)(d))
- The right to bodily and psychological integrity, which means among other things that people should have control over their own bodies (section 12(2)(b)) and not be subject to medical or other experimentation without their informed consent (section 12(2)(d))
- The right to privacy (section 14)
- The right to access healthcare services and reproductive healthcare (section 27(1)(a)).

The importance of these sections of the Constitution<sup>[19]</sup> for the health sector is that patients' autonomy is constitutionally entrenched. Regardless of their benevolence, healthcare practitioners may therefore not undermine patients' autonomy and right to give informed consent to (or refuse) healthcare services.<sup>[9]</sup> Because patients have an expectation to be treated in accordance with these constitutional rights, it follows that the conduct of student practitioners should reflect their respect for patients' rights.

### The NHA<sup>[17]</sup>

Sections 6(1) and 6(2) of the NHA<sup>[17]</sup> provide that healthcare providers must inform patients, in a language and manner that they understand, of:

- their health status
- the range of procedures available to them
- the benefits, risks and costs thereof
- the right to refuse treatment and the implications of refusal of treatment.

In terms of section 7 of the NHA,<sup>[17]</sup> health services may not be provided without the patient's informed consent. In addition, section 8(1) of the NHA<sup>[17]</sup> gives a patient 'the right to participate in any decision affecting his/her personal health and treatment'.

### The HPA<sup>[21]</sup> and the HPCSA and its ethical rules and guidelines

One of the purposes of the HPA<sup>[21]</sup> was to create the HPCSA. The function of the HPCSA is to 'protect the public and guide the professions', which it achieves through the ethical regulations (published as a schedule to the HPA<sup>[21]</sup>) and guidelines (contained in booklets 1, 3 - 14 and 16) it publishes in terms of section 49 read with sections 61(2) and 61A(2) of the HPA.<sup>[21]</sup> The HPA<sup>[21]</sup> further controls the education, training and registration of health professions and all related matters.

While some of the more general ethical rules such as the rules about professional confidentiality (rule 13) and the reporting of a colleague's (or one's own) impairment, or unprofessional, illegal or unethical conduct (rule 25)<sup>[26]</sup> can easily also apply to student practice, most of the rules are targeted at qualified practitioners and do not apply to issues specific to students at all.

The HPCSA's documents refer to students in two places. The first is in the annexures to the ethical rules, published by all the professional boards to cover profession-specific concerns not covered in the rules. Most of these documents are relatively similar and require qualified practitioners, student practitioners, assistants and technologists to adhere to rules 2 - 27 contained in the main document, in addition to the board-specific rules contained in the relevant annexure. Each of the professional boards further requires students to perform acts under supervision only (a concept that is not defined), and to perform only those acts directly in keeping with their level of training, which is presumed to relate to skill. Medical and dental students, in addition, may not work in private practice or act as locum tenens.<sup>[26]</sup>

The Professional Board for Psychology published a comprehensive appendix that follows a different format to the other documents. Psychology students, when obtaining consent from patients, are required to:

'... as early as is feasible in the therapeutic relationship, provide the client concerned with appropriate information ... and when the psychologist is a trainee and the legal responsibility for the treatment provided resides with the supervisor, the client shall, as part of the informed consent procedure, be informed that the therapist is in training and is being supervised and the client shall be given the name of the supervisor.'<sup>[26]</sup>

Although psychology students must disclose the fact that they are in training, the emphasis in this rule appears to be less on the fact that a patient should be able to make an autonomous decision about participating in the training of the psychology student and more on the fact that the patient should know who the supervisor is. While not stated overtly, it is presumed to be implied here that the patient should be aware that information shared may be disclosed to the named supervisor, so the patient must in effect consent to a breach of confidentiality.

In addition to the schedules, booklet 9<sup>[27]</sup> in guideline 3.1.3 gives examples of information that patients may need for purposes of informed consent, including '... whether students will be involved, and the extent to which students may be involved in an investigation or treatment'<sup>[27]</sup> This guideline is not specific about the process of obtaining informed consent for student involvement, or who must disclose information about student involvement.

It is important to note that patients have the right to refuse treatment, not only in terms of section 6(1)(d) of the NHA, but also in terms of item 2.9 of the National Patients' Rights Charter.<sup>[18]</sup> Further, patients may not be prevented from seeking a second opinion or being treated by another healthcare practitioner (rule 11).<sup>[26]</sup> Non-disclosure of academic status is likely to unfairly limit this right.

### Non-medical legislation

The Consumer Protection Act<sup>[28]</sup> provides two further important rights to consumers that are likely to impact on students rendering healthcare services, i.e. the right to select suppliers (section 13) and the right to be provided with information in a plain and understandable way so as to be able to make an informed choice (section 22).<sup>[28]</sup> However, if patients are not informed that a person involved in their care is a student, they are unable to refuse treatment or to choose another service provider. Furthermore, section 41 requires fair and honest dealing.<sup>[28]</sup> 'False, misleading or deceptive representations' are impermissible in terms of this section, so it could be extrapolated that patients are entitled to know the academic status of persons involved in their care, and information provided to patients should be unambiguous.

Information must be provided in such a way that it can reasonably be understood by the class of people for whom the notice, documentation or visual representation is intended, or those with average literacy skills and minimal experience as a consumer (section 22(2)).<sup>[28]</sup> This section does not require information to be available in all official languages.<sup>[29]</sup> The question that arises is whether people with minimal experience as consumers of healthcare services at teaching hospitals understand what it means to seek healthcare services at a teaching or academic hospital. It can be argued that the presence of signboards designating a hospital as a teaching hospital is not sufficient to absolve a student or healthcare practitioner from disclosing the academic status of persons involved in a patient's care.

### Discussion and recommendations

In the SA context, patients have rights that, while clear with respect to qualified practitioners, are not well defined in relation to student involvement in the rendering of healthcare services. One such right is that to informed consent. When patients are not provided with all the relevant information needed to give an informed consent to treatment, including knowledge of the academic status of persons involved in their care, healthcare practitioners and students fail to empower them to make informed decisions about their healthcare. This contravenes the autonomy of patients and the right they have to informed consent in terms of section 7 of the NHA.<sup>[17]</sup> In this regard, clear guidelines regarding student involvement in patient care are necessary.

From the prudent patient standard, applied to test whether a patient has given informed consent, it can be argued that lack of skill of the person performing a procedure could constitute a material risk regarding the success of a procedure. It can therefore be extrapolated that a prudent patient would want to be informed that a student will be involved in his/her care, as well as the extent of such involvement. This could also be extended to simple procedures such as history taking, because an unskilled person is likely to take longer to take the history, to ask unnecessary questions or to leave out pertinent information, which could result in discomfort for the patient at the least, and may be to his/her detriment should serious aspects such as possible adverse drug interaction be missed.

Nowhere does the NHA<sup>[17]</sup> explicitly require disclosure of the academic status of a healthcare provider. It could be argued that disclosure of academic status is part of stating the risks and consequences when obtaining informed consent from a patient, as required by section 6(1)(c) of the NHA.<sup>[17]</sup> Additionally, the fact that the NHA<sup>[17]</sup> gives patients the right to participate in decisions about their treatment could indicate that patients have a right to informed consent regarding student participation in their treatment. Furthermore, it could be argued that because of the inclusion of the right to know the costs of healthcare services, which relates to non-medical information, it can be extrapolated that the NHA<sup>[17]</sup> allows for the disclosure of other pertinent non-medical information, such as academic status.

It is reasonable to assume that patients entering healthcare facilities such as hospitals expect to receive care of the standard that would be provided by a qualified healthcare practitioner. However, students cannot measure up to this standard owing to their limited training, and patients should know when a person in training is involved in their care.

There appears to be a need for guidelines on student involvement in patient care. Such guidelines should address patients' right to informed consent and the disclosure of academic status of persons involved in their care. Patients' right to refuse student involvement in their care should be included, as should their right not to be coerced or deceived in this regard. Students and their educators/supervisors should respect patients' rights.

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