

THE ROLE OF DOCTORS IN THE UITENHAGE UNREST

THE LEGAL PERSPECTIVE

Doctors treating unrest victims have been criticised for neglecting to protect the rights of their patients in the face of police control. In the following article, Advocate Gilbert Marcus from the Centre for Applied Legal Studies at the University of the Witwatersrand spells out the rights of the police and the responsibility of doctors vis-a-vis the patients.

The Uitenhage shootings

The recent shootings at Uitenhage and the treatment of the victims of unrest have raised critical questions about the role of medical practitioners in such situations. It has been a shameful period for both the legal and medical profession. Medical and legal practitioners, with a few exceptions, have neglected their overriding responsibility to their clients. It has also been a period during which government officials have acted in apparent disregard for legality and basic human dignity.

The role of the doctors

Judging from statements of unrest victims in the Eastern Cape, it is especially doctors in the provincial hospitals who are alleged to have neglected their responsibilities towards their injured patients.

The police appear to assume that any person with bullet injuries has been involved in acts of public violence. Such an injury is usually an automatic passport to arrest and imprisonment.

Many people have alleged that doctors have actively co-operated with the police in pointing out patients

with bullet injuries, and these patients are then arrested and taken to the police cells. These reports raise issues that concern the medical profession from both a legal and an ethical point of view. There is a complex relationship between legal obligations of medical practitioners and their ethical obligations. It is a mistake to assume, however, that ethical and legal obligations always coincide. It is quite possible that the conduct of a medical practitioner may be legal and at the same time unethical. This may be applicable to the allegations against the doctors involved in treating the victims of unrest in the Eastern Cape.

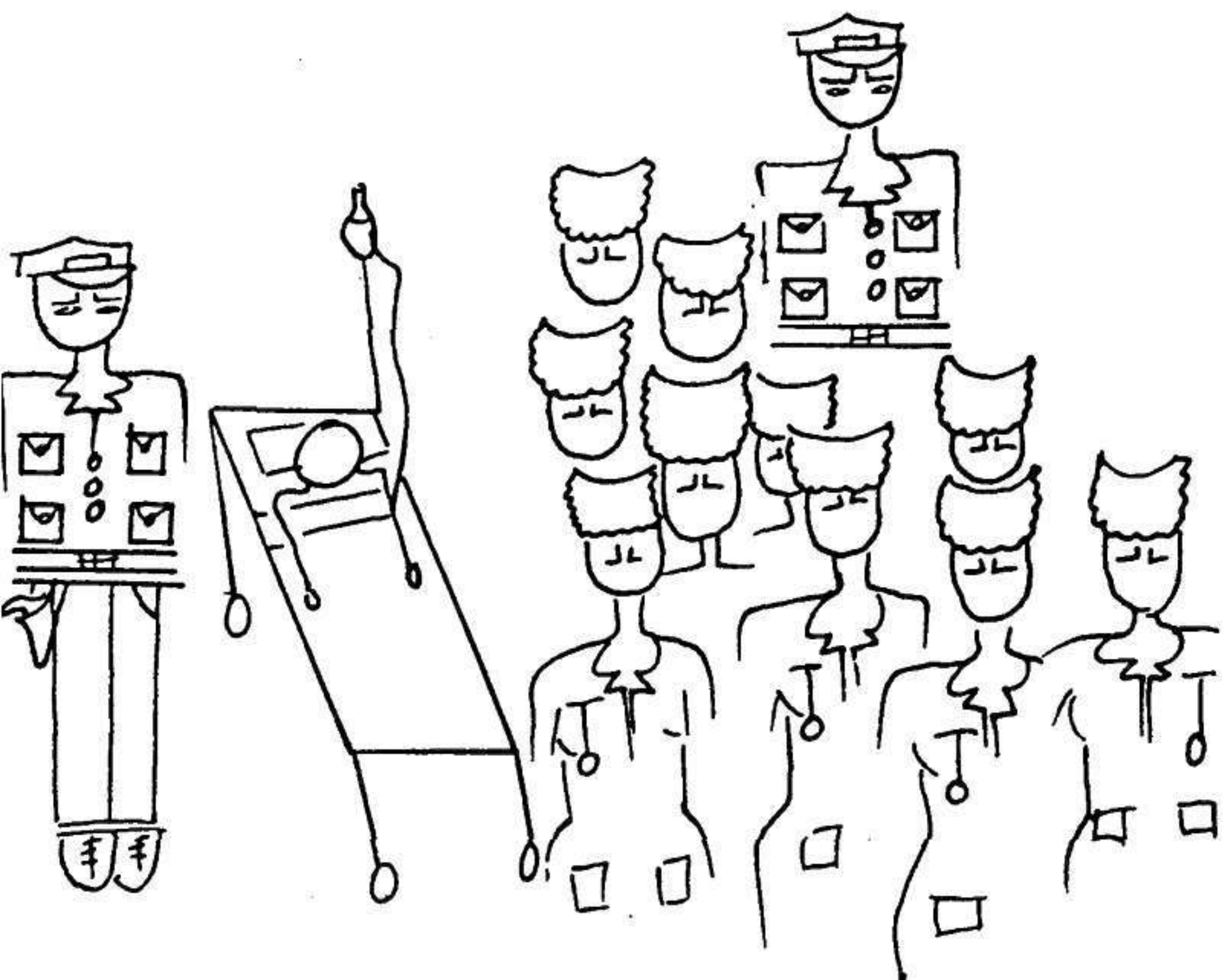
The rights of the police

The present discussion will be confined to the rights of the police as set out in the Criminal Procedure Act 51 of 1977. The details of the Internal Security Act 74 of 1982, which provides for detention in solitary confinement for an indefinite period, will not be discussed here, as other, different laws deal with those detained under this Act.

The Criminal Procedure Act says that a police officer is entitled to arrest any person whom he suspects on reasonable grounds of having committed an offence. If the suspect is in hospital and receiving medical attention, a police officer still has the power to arrest him. So if there are reasonable grounds for suspecting that a patient has been involved in committing a criminal offence, a doctor who hinders a policeman in arresting that patient, could be prosecuted. But such an arrest is lawful only if there is reasonable suspicion that the person to be arrested has been involved in some criminal activity. Normally, the police officer concerned would have to have a warrant of arrest, but there are circumstances in which a warrant is not required. If the arrest and subsequent detention can be shown to be unlawful, the arrested person could sue for damages.

If the police in the Eastern Cape assume that a bullet wound means that the injured person has been involved in acts of public violence, then that does not comply

with the reasonable suspicion of the commission of an offence, as it is stipulated by the Criminal Procedure Act. An arrest on such grounds alone is, in my view, patently without adequate justification.



In addition to the general power of arrest, the police enjoy powers of entry, search and seizure. Such seizure would include the power, in appropriate circumstances, to seize hospital records. A claim of confidentiality as between doctor and patient would be of no avail in such circumstances. Given the fact that the police enjoy these powers, the question arises whether there exists in law an obligation upon medical practitioners to volunteer information concerning their patients. Apart from certain statutory exceptions, such as the duty to report 'notifiable diseases', there exists no general obligation whatsoever upon a medical practitioner to divulge information concerning the commission of an offence. Where there are no grounds for suspecting any patient or patients of having committed an offence, it seems to me that a medical practitioner is not under a general obligation to divulge information to a policeman who arrives at a hospital on a 'fishing expedition' in search of people wounded in the unrest. It may well be that to disclose such information is unethical.

The legal and ethical issues

While not dealing in any detail with medical ethics, some examination of this topic is unavoidable. It has been reported that patients wounded in the unrest have been removed from hospitals and taken to prison with the knowledge and active co-operation of doctors employed at provincial hospitals.

In general terms, a doctor's first duty is to render medical care and assistance to his or her patient. A question to consider is whether that duty ends just because the patient has been removed from the doctor's care and custody. In my opinion, it is not a sufficient answer for a doctor to disclaim responsibility for the treatment of a patient simply because that patient has been removed from the hospital by virtue of a warrant of arrest. At the very least, a doctor in such circumstances would be obliged to compile a medical history of the patient detailing the treatment that was administered, as well as recommendations for future treatment. This information should be made known to the

arresting officer, and more importantly, to the district surgeon for the area. This would at least ensure that the district surgeon, who would then assume responsibility for the treatment of the patient, was fully aware of the treatment received by the patient as well as indications for future treatment. This would then make the district surgeon responsible for ensuring that the patient continued to enjoy proper medical care.

There is a strong case for arguing that a doctor who fails to take these elementary precautions to ensure the continued treatment of a patient, would be guilty of improper or disgraceful conduct. One of the main complaints against the doctors responsible for the treatment of Steve Biko was the fact that they sanctioned his removal to the Pretoria Central Prison hospital, a journey of some 800 miles. The evidence disclosed that he was transported in the back of a landrover, naked, critically ill, and unaccompanied by any medical personnel. It was alleged against Dr Tucker that he showed a disregard for the gravity of the situation by sanctioning the journey in spite of the fact that the patient had shown clear indications of a brain lesion and that he had already collapsed and become semi-comatose. It was argued at the hearing of the application to compel the South African Medical and Dental Council to hear complaints against the doctors concerned, that it was highly improper not only to sanction the journey, but also to fail to provide an adequate medical report of the patient's condition.

The Medical, Dental and Supplementary Health Service Professions Act 56 of 1974 does not define what is meant by improper or disgraceful conduct. It is left to the Medical and Dental Council to decide such matters. In the recent decision concerning the conduct of the doctors responsible for the treatment of Steve Biko (Variawa v President, SA Medical and Dental Council, 1985 (2) SA 293 (T)), the court said the following:

The Act entrusts the supervision of the conduct of registered medical practitioners to the council which is mainly comprised of members of the medical

profession who know and appreciate the standards which medical opinion demands of their own profession...The council is thus truly a statutory custos morum of the medical profession, the guardian of the prestige, status and dignity of the profession and the public interest in so far as the members of the public are affected by the conduct of members of the profession to whom they have stood in a professional relationship.

It remains to be considered whether the medical profession can take any action against the doctors involved. The answer, it is suggested, has been supplied by the Supreme Court which heard the complaint against the South African Medical and Dental Council. The court stated:

"Members of the medical profession have a real and direct interest in the prestige, status and dignity of their profession and have a right to expect of the council to exercise its powers under the Act to protect the prestige, status and dignity of their profession in the event of a complaint being lodged about conduct which is damaging to the profession and in respect of which the Act has given the council powers to deal with. Similarly a member of the public, to whom the practitioner had stood in a professional relationship and who is affected by such conduct in respect of which a complaint has been received by the council, has a right to expect the council to exercise its powers under the Act. If such complaints of professional misconduct or improper or disgraceful conduct go unheeded, one of the main and important objects of the Act will be defeated and will be rendered nugatory and the medical profession and public interests in so far as members of the public are affected by such conduct will be unprotected."

If there has indeed been disgraceful conduct by the doctors concerned with the treatment of unrest victims, then the remedy lies with the medical profession itself.

The following document is a draft memorandum proposed by the Hillbrow branch of NAMDA. It is intended that hospital authorities be asked to endorse such a document. It is published here to generate discussion. Critical feedback should be sent to Critical Health, P.O. Box 16250, Doornfontein 2028.

MEMORANDUM

HEALTH PROFESSIONALS AND VICTIMS OF CIVIL UNREST -

NAMDA HILLBROW BRANCH

1 Patients' Rights

1.1 Gunshot wounds do not have to be reported to the SAP.

1.2 If a patient is under arrest in hospital, common law privileges apply unless the patient is held under laws which prohibit access. The family has the right to visit the patient.

1.3 The hospital should ensure that the family is informed of a victim's admission and condition. Enquiries should be competently handled. When a patient is removed into police custody, the family must be notified.

2 Health Professionals

2.1 Detailed records must be kept. Records must be safe-guarded against loss and should not be made available to army or police personnel without the appropriate authorisation.

2.2 A special disaster-plan to manage unrest victims may need to be drafted and all hospital staff may need to be trained in its application.

2.3 Special attention may need to be given to the training of personnel to manage the types of injuries occurring during civil unrest.