

Nursing malpractice: Not the end of the world as we know it

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I look forward to reading the study by Professor Stellenberg at Stellenbosch University's Faculty of Medicine and Health Sciences.

The heading of that statement refers to civil claims against private hospitals sky rocketing due to nursing malpractice. One hundred and twenty-two completed cases were studied, not a particularly large number bearing in mind the thousands of patients successfully treated each day in private hospitals around the country.

My long experience is that the number of medical malpractice claims against private hospitals in South Africa have not grown exponentially. And are certainly nowhere near the degree seen in the public health sector. Any growth in the number of actions is not disproportionate to the growth in new private healthcare facilities opened and the increase in private patient bed space.

The quantum of damages claimed in actions launched has certainly increased – sometimes significantly – as have settlements and awards made. Often, however, the quantum of damages claimed in the papers filed in an action bear no rational resemblance to the damages actually suffered and recoverable and management of the claimant patient's expectations becomes difficult.

Medical inflation is often beyond that of the CPIX and medical interventions and solutions have increased in sophistication and cost, for example prosthetics' functionality and costs have increased dramatically year on year. A sophisticated plaintiff's bar for medical malpractice claims now insures that in deserving cases all appropriate damages are recovered.

Cases are settled for a variety of reasons. Yes, the merits of the defence may be poor requiring a settlement as soon as possible. A hospital may settle out of concern for reputational damage. That concern may be related to the merits of the defence but is sometimes also driven by an awareness that even if the claim is defensible adverse media publicity would be more harmful than a successful defence. Claims are also settled because settlement may be far cheaper than the cost of running a successful defence of the claim. Patient claimants also withdraw or settle their claims when in

preparation for trial, further investigations have shown that the claim is without merit, or far more difficult and costlier to establish than originally thought.

Our courts from time to time caution against imposing liability on hospitals and doctors simply because something has gone wrong.

It is, of course, correct to require hospitals and nursing staff to exercise due care and to conduct themselves without negligence. Where that negligence causes harm, appropriate compensation should be provided.

The study is useful in identifying factors that contributed (and will in the future contribute) to civil claims and which require remediation. Of course, it should be born in mind that because allegations of specific types of negligence were made in the claim and the claim was then settled, it does not follow that the alleged negligence occurred. The study, in referring to insufficient training, suggests that universities and training colleges may need to review the quality of their student output, and hospitals review hiring and ongoing training criteria, and delivery. Supervision and the disciplining of staff where incorrect procedures, inadequate monitoring and inadequate or untimely responses took place is crucial.

It is certainly not my experience that members of the executive or senior management of any hospitals – including hospital networks (large and small) – pursue profit at the expense of patient safety. To the contrary, boards and management are very jealous of their reputation for providing quality care. Extensive sums are spent annually, for example by the large hospital networks, in the clinical training of staff and on risk – including medico-legal, management of their staff and patients, and in skills upgrading. Any patient injured as a result of medical negligence is one too many, and not to be tolerated. I do not think, nor is it my experience, that private hospital leadership has such a tolerance.

Donald has practiced medical malpractice law, acting largely for private practitioner and facility defendants, for over 26 years.