

# Medical Certificates Issued by Traditional Health Practitioners: Are they Valid in the Eyes of the Employer and the Law?

Ngema Nqobizwe Mvelo <sup>1</sup>, Mthokozisi Khuzwayo <sup>2</sup>

<sup>1,2</sup> Department of Law, University of Zululand, South Africa.

<sup>1</sup> Corresponding author: [NgemaNM@unizulu.ac.za](mailto:NgemaNM@unizulu.ac.za)

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**Abstract:** The Basic Conditions of Employment Act 75 of 1997 (BCEA) is the legislation that is responsible for regulation of employee's leave in the employment sector. Section 23 authorizes the employer not to remunerate an employee who has been absent from work for more than one consecutive day without producing a medical certificate stating that he or she was absent from work because of illness. Validity of medical certificates issued by traditional health practitioners remains a contentious issue. In view of the cultural and religious diversity that thrives in the country. The Constitution permits citizens to practice their cultural beliefs as they deem fit provided that is done within the confines of the Constitution. Cultural beliefs and religious beliefs play a major role in the general psych of a human being. This goes a long way even when a person falls sick, his or her belief system directs the appropriate path to be taken when seeking healing. One may prefer to go to church for deliverance and prayers, another person may choose to seek help from hospitals (with doctors using western medicine) and others may choose to go to traditional healers for help. Until of late, traditional health practitioners such as *Sangomas* and *Izinyanga* were not registered in any council created in terms of legislation as mandated by the BCEA 75 of 1997. Any traditional health practitioner registered with the traditional health council is entitled to issue a valid medical certificate. However, this paper cautions that it would be difficult to regulate traditional health practitioners because they are not trained in a same way and their training has a connection with the leading of the ancestral spirits. This paper also shows the dangers of failing to separate between the law and spiritual matters.

**Keywords:** Validity of Medical certificates issued by Traditional Health Practitioners

## Introduction

A traditional practitioner is defined in section 1 of the Traditional Health Practitioners Act 22 of 2007 as a "person registered under this Act in one or more categories of traditional health practitioners." The categories of traditional health practitioners include "diviners, herbalists, traditional birth attendants and traditional surgeons" (section 147 (f) (i)). The reading of section 147 shows that the council has an obligation of determining who is to be registered as a traditional healer. It is estimated that traditional healers are more likely to be more than 200 000 in South Africa and more than 80 percent of the population consult traditional health practitioners (Rautenbach, 2007, 518). However, there are no available accurate statistics because many traditional healers are not yet registered, and this makes it difficult to ascertain their exact number. Muller and Steyn rightfully observed that traditional and western health system has operated concurrently in South Africa for many years, but the western health system has enjoyed greater official acceptance (Muller and Steyn, 1999). The government has invested a lot of money and resources to develop western health system and thereby making it very expensive if compared to traditional health systems (Hopa, Simbayi and Du Toit, 1998). Since, traditional health system is cheap and easily accessible more especially in rural areas it makes it more appealing to most of the population (Hewson, 1998; Zungu, 1992).

South Africa is a country that is categorised as multi-lingual, multi-cultural, multi-faith, and multi-political where diversity is a reality. For this reason, it popularly known by many as a rainbow nation where diversity of cultures and religions thrives in harmony. However, it's worth noting that the coexistence of multiple cultures and religions in one geographical territory is both a strength and a weakness. As far as the cultural and religious pluralism adds to the

diversity in the country, it is not easy for these cultures and religions to co-exist harmoniously because they often clash (Dlamini, 1994, 573). It goes without saying that Africans have been using traditional medicine from time immemorial and even today some people still strongly believe in traditional medicine. So, traditional medicine contributed a lot “in ensuring that women who wanted to conceive, pregnant women and women with young children received services appropriate to their stage (Thipanyane, Nomatshila, Musarurwa and Oladimeji 2022, 08). It is not in dispute that traditional health practitioners have been catering for numerous health needs of the majority of South Africans for centuries but the marginalisation of traditional ways of healing is attributable to the legacy of colonialism and apartheid (Mbatha, Street, Ngcobo and Gqaleni, 2012, 129). In 1974 the regional committee of the World Health Organisation (WHO) for Africa decided to discuss the issue of traditional medicine and its role in the development of health services in Africa in its 26<sup>th</sup> session (Summerton, 2006, 145).

This had an impact on South African legal order from around the 1990s onwards. The move towards the recognition of traditional health practitioners is also reflected in the stance that was taken by the African Union (AU) in 2001 when the African heads of state declared a decade for traditional medicine (Summerton, 2006, 129). These global events had an immense impact on South Africa and led to the promulgation of the Traditional Health Practitioners Act 22 of 2007 (THPA) which was signed into law in 2008. The employers were seriously concerned about the promulgation of the THPA and were of the view that it would result in the abuse of sick leave and absenteeism from work (Mbatha, Street, Ngcobo and Gqaleni, 2012, 129). The latter mentioned Act provides for some measures of regulating traditional health practitioners (THPs) and established the interim council for registration of THPs. The registration of the THPs by a statutory recognised body will enable THPs to issue valid sick notes as mandated by the provisions of the Basic Conditions of Employment Act 75 of 1997. The interim council that was assigned to regulate and register THPs has been riddled with so many challenges and thereby not fully functional. The interim council was established in terms of section 4 of the THPs Act of 2007. The council was installed in February 2013 and in May 2014 the sections of the THPs Act that gave it power came into effect. The council is a professional body established by parliament and it gives traditional healers registered with it the power to issue medical certificates in line with the Basic Conditions of Employment Act (BCEA) 75 of 1997 (Tshehla, 2015, 279). There is a series of court cases where employees used sick notes issued by THPs, but the decisions of these cases are not consistent, and this leaves uncertainty on the side of both employees and employers. This article seeks to investigate whether the sick note issued by traditional health practitioners is valid or not in the eyes of the employer and the law.

### Current legal framework

As already mentioned earlier, the World Health Organization (WHO) has already called for the recognition of traditional healers and medicine. In response to this call, the department of health initiated a White paper for the transformation of health system in the country (Phila, 1997, 232). This was followed by a request that public hearings should be conducted in all nine provinces of the country. Public hearings were organized by the Provincial legislatures with an aim of receiving comments on the following issues:

- (a) Statutory council for traditional healers.
- (b) Issuing of medical certificates by traditional practitioners, and
- (c) Medical aid coverage of care provided by traditional practitioners.

The National Council of Provinces (NCOP) only received reports from seven provinces instead of nine provinces and issued a report to the National Assembly (NA) portfolio committee on Health. This led to the promulgation of Traditional Health Practitioners Act 35 of 2004. This Act never seen the light of the day because it was challenged to the Constitutional Court by the Doctors for life international and was declared invalid (*Doctors for life international v Speaker of the National Assembly and others*). The reason for invalidity is that the provincial legislatures failed to adhere to their constitutional mandate to facilitate the public involvement in the process of enacting the legislation (Le Roux, 2011, 100). It is commendable that Parliament managed to pass the Traditional Health Practitioners Act 22 of 2007 aimed at regulating traditional practitioners three years later. The 2007 Traditional Health Practitioners Act had no constitutional challenges (Abrams, Falkenberg and Rautenbach, 2020). This paper seeks to find out whether the certificate issued by a traditional healer is valid or not before the eyes of the employer.

The recognition of sick notes issued by traditional practitioners such as diviners, herbalists, traditional birth attendants, and traditional surgeon has been a subject of controversy in South Africa. The decided cases have not yet been able to address the uncertainties surrounding the acceptability of certificates issued by traditional health practitioners. In the industrial court case of *Dlongolo v Prima Industrial Holdings (Pty) Ltd 1994 (3) LCD 98 (IC)*, the employee left the premises of the employer and he returned to work five months later. When he came to work, he produced a letter from

a traditional healer which provides as follows: “Re: Mr. Elphus Dlongolo acting for the above I draw to your attention that 1. He felt ill on the 11/04/91 the sickness being failing to owe allegiance to the ancestors. 2. His condition has improved to an extent that he can start his lawful duties and you will be also provided by the copy of his certificate certifying that he has been undergoing training.” The employee was eventually dismissed from work because of deserting his work for a long time. The industrial court held that was a fair reason for dismissal but never saw any necessity to address the validity of medical certificates issued by traditional practitioners.

In the case of *Kievits Kroon Country Estate (Pty) Ltd v the CCMA and others [2011] 3 BCLR 241 (LC)*, an issue of unauthorized absence from work and certificates issued by traditional health practitioners came to the fore. In this case the employee was employed as a chef, and she requested an unpaid one month leave to attend traditional healing course. She submitted a medical certificate from a traditional health practitioner to the employer which reads as follows: “This serves to certify that Johannah Mmoledi was seen by me on 13/01/07 and was diagnosed to have a premonition of ancestors...I hereby inform you of the graduation of the abovementioned patient. I am asking you to please give her days from the 4<sup>th</sup> of June to the 8<sup>th</sup> of July 2007 to complete her initiation school final ceremony to become a traditional healer.” The employer refused to grant her request, but she went further to embark on a traditional healing course and after she was absent for approximately one week, she was dismissed following a disciplinary enquiry. The CCMA found that the dismissal was procedurally fair but substantively unfair. This decision failed to address the issue of the validity or otherwise of a certificate issued by a traditional health practitioner.

Basic Conditions of Employment Act 35 of 1997 mandates any health practitioner who want to issue medical certificates commonly known as sick notes to be registered with the council body established by parliament. The challenges involved in ascertaining the authenticity of THPs cannot be easily resolved because their training is not the same and the period for such training is not similar also. Many THPs have been already practicing before the enactment of the Act intended to regulate them and some may not even aware about its existence. With the latter mentioned problems surrounding the regulation of THPs, it is not likely that there is any THP that is already registered in terms of the Act. The inaccessibility of the names of registered THP in their council’s website makes it difficult to ascertain the number of registered THPs if there are any.

### **Problems of Relying on Medication Prescribed by Spirits**

The traditional healer’s training is not homogenous, ranging from time frame for initiation and the method of training is not the same. This was one of the concerns that were raised by doctors for life and were worried that the health system in the country might deteriorate if the prescription of influenced by the spirits. There is an atom of sense in the concerns raised by the doctors for life because there are many bogus traditional healers out there who are not truly called by their ancestral spirits to serve as traditional healers but are faking to be healers just for the sake of survival from the harsh economic conditions that are befalling many.

Another concern raised by the doctors of life was the protection of the general population of the country if the THPs are allowed to minister medication to people even though it is not scientifically proven. The medication that is not scientifically proven might pause health problems to human life and this is one of the reasons for the establishment of the council to regulate THPs. The Act requires that a person ought to be registered if he or she want to practice as the traditional practitioner. “Another probable drawback, in the face of an already tight health budget, could be the potentially expensive and time-consuming implementation and monitoring of licenses and the testing and certifying of traditional remedies” (Howse 2000, 341).

### **Conclusion**

The current decided cases have not been able to resolve the controversy surrounding the validity of medical certificates that were issued by traditional healers. The aim of this paper was to ascertain the validity of medical certificates issued by THPs. One of the problems that are confronting the council for THPs is their diverse training methods and period. It is not easy to regulate like medical practitioners that are using western methods. This is likely to pose risk to those who rely on THP because the medicine used by THPs is not scientifically proven. This paper wanted to investigate the validity of medical certificates issued by traditional health practitioners. The Basic Conditions of Employment Act requires that for such medical certificates to be valid, they must be issued by a traditional practitioner that is registered with the council established in terms of an Act of parliament. The council for traditional practitioners is established in terms of the Traditional Health Practitioners Act (THPA) of 2007 and provisions that gives effect to the council came into effect in 2014. A decade later, there is not much progress on the registration of traditional healers and as it stands, the traditional health practitioners that is not yet registered with the council for traditional leaders is not allowed to

issue a valid medical certificate. Only a traditional health practitioner that is registered with the council is allowed to issue a valid medical certificate.

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