



Because I said so...

Understanding where our laws come from

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The first law that a child learns is not to disobey his or her mother's instructions. Dare to question why you must do something, and you'll be told "Because I said so!" And don't think you can soft soap Dad either – they'll gang up on you.

As we grow older, we come into contact with more and more laws, and they become increasingly complicated. As a pharmacist's assistant or technician, you know that, in particular, you must comply with the requirements of the Pharmacy Act, 65 of 1974, and the Medicines and Related Substances Act, 101 of 1965.

Do you know how these and other laws are made? We're going to have a brief look at the process of how a law is developed

Those who cannot remember the past are condemned to repeat it

A wise statement made by a wise man, George Santayana, in 1905. I thought of this when, on a chilly grey day, I walked through the Dachau Concentration Camp Memorial site in Germany. There is a panel with the words "Never again" in Yiddish (using Hebrew letters), French, English, German and Russian¹. The bleak atmosphere and the stark words drew attention to the atrocities that took place on that very site during the Second World War.

That's far away from our everyday life now, or is it? In the year 2018, very few people will be unaware of the harsh iniquities, and inequities, perpetrated in pursuit of apartheid. We may however be unaware of how these events resulted in changes of policies and laws.

Starting with Sharpsville

In March 1960, the Pan Africanist Congress launched a campaign aiming to abolish the pass laws that segregated people and required migrant labourers to live in allocated areas. On 21 March 1960, in a place called Sharpsville, which is in Southern Gauteng, between 5000 and 7000 people marched

to the police station². Reinforcements were called in to help the police. It's not completely clear why the shooting started, but the use of live ammunition by the police resulted in the deaths of 69 people, including 8 women and 10 children, while at least 180 people were wounded³.

What does this have to do with the law?

Every year, the Sharpsville massacre is remembered on 21 March, which is celebrated as Human Rights Day. Human rights have received attention in South Africa since the 1955 publication of the Freedom Charter by the African National Congress (ANC) and its allies. It was only when the Constitution of the Republic of South Africa⁵ was adopted in late 1996 that South Africa's commitment to respect human rights became written into law. No law can go against the Constitution, which includes the Bill of Rights that emphasises the democratic values of human dignity, equality and freedom⁶.

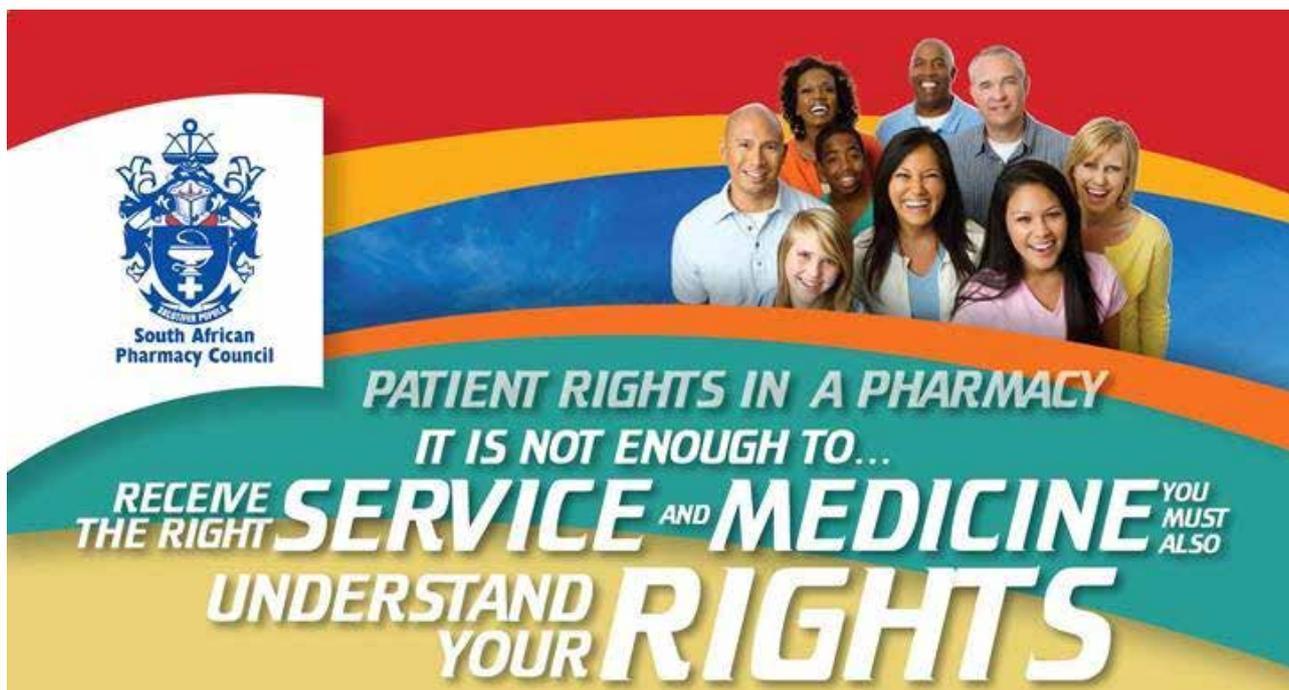
Principle, policy, law and practice



From principle to practice

Identifying a principle

We can use the Bill of Rights, which is Chapter 2 of the Constitution, as an example to show how a law is developed and implemented. The writers of the Freedom Charter started



by consulting communities on their ideas about freedom – what would they need to feel free? What were their freedom demands? The answers varied from being allowed to live in a house even if the breadwinner (always the husband) was unemployed to having a good sports field. Eventually, all input was scrutinised, and a list of freedom demands were identified. These had sound principles, but they were just words. Something needed to happen before they became meaningful.

Developing a policy

The next step was to use the principles to develop a policy, which provides guidance for action. The Freedom Charter contains ten sections in which the demands reflect the hopes and dreams of the people living in this country.

- The people shall govern
- All national groups shall have equal rights
- The people shall share in the country's wealth
- The land shall be shared among those who work it
- All shall be equal before the law
- All shall enjoy equal human rights
- There shall be work and security
- The doors of learning and culture shall be opened
- There shall be houses, security and comfort
- There shall be peace and friendship

Policy becomes law

This sounds very good, but was the policy put into action? Over the years, many laws were amended and new ones were introduced. It is clear that the Charter did not fade into oblivion. Elements from it are contained in the Constitution of South Africa, which was signed into law in December 1996. In

addition to addressing the structure of government, it defines the rights and responsibilities of South African citizens.

Chapter 2 of the Constitution, for example, deals with our rights, and how they must be respected, protected, promoted and fulfilled. This places great responsibility on each of us as well as on all institutions. Section 27 is particularly important to us as healthcare professionals, because it states that, within the limits of its resources, the state must progressively realise the right of citizens to food, water, health care and social assistance. Among other activities, it explains why the country is moving towards Universal Healthcare Coverage, which will happen in this country as National Health Insurance. It is the way in which the state believes that it can achieve the right of making access to healthcare available to all citizens.

What happened next? Obviously, many changes in legislation and in society were needed to implement the Constitution. Today, when any new piece of legislation is introduced, it must meet the requirements of constitution.

Rights affecting healthcare

Although it's tempting to go through all the legislation that has been influenced by the Constitution and in particular the Bill of Rights, let's have a brief look at the National Health Act, 61 of 2003. The preamble to the Act shows very clearly that the intention is to comply with the Constitutional mandate not only to ensure that the people of South Africa have access to health care services, but that their rights are acknowledged and respected.

In this Act, many of the sections reflect the rights identified in the Bill of Rights. Activities can be identified that support the patient's right to human dignity and privacy. Arguably the most important right when considering the provision

of healthcare services is found in Section 27 of the Bill of Rights, which deals with the right to food, water, healthcare and social assistance. Section 4 of the National Health Act deals with eligibility for free health services in public health establishments, while section 5 states the health care providers and establishments may not refuse to provide someone with emergency medical treatment.

Other relevant rights identified in the Bill of Rights are found in section 12(2)(b), the right to security in and control over your own body and section 32, access to information. These are expressed in the National Health Act in section 6 – user to have full knowledge, section 7 – consent of user, and section 8 – participation in decisions. The right to privacy (Bill of Rights, section 14) is found in section 14 – confidentiality, and section 17 – protection of health records.

When it comes to healthcare services, the Act even goes a step further than the Bill of Rights. It deals with complaints that may be laid by someone who is unhappy about the treatment received at a health establishment. In addition, it also deals with the duties of people using health services, because with every right comes a responsibility. Healthcare workers are also recognised as people with human and other rights, and the Act spells out the rights of healthcare personnel.

Implementation

All healthcare establishments need to consider the requirements of the National Health Act, and to draw up SOPs ensuring that the requirements will be met.

From the National Department of Health's point of view, one aspect of implementation of the National Health Act was

to make sure that not only are the health establishments compliant with it, but that consumers of healthcare services are aware of their rights and responsibilities. This is why the Patients Rights Charter was developed.

The Pharmacy Council went a step further, and developed posters and brochures outlining a patient's rights and responsibilities in a pharmacy and when using medicines.

As a pharmacist's assistant or technician, you will be familiar with the Standard Operating Procedures (SOPs) in your workplace. Obviously, in pharmacy we are aware that our practice must meet the requirements of the Pharmacy Act, as well as its rules and regulations. Our SOPs must also be scrutinised to make sure that they comply with the Pharmacy Act, and also with the National Health Act and the Bill of Rights. This is the responsibility of the responsible pharmacist in the pharmacy, but we are all responsible for making sure that we practise within all these requirements. So while we may not be solely responsible for implementation of all the legislation, it is important that we should make sure that our personal practice does not infringe the rights of patients.

Websites to visit

1. <https://www.kz-gedenkstaette-dachau.de/stop13.html>
2. <http://www.sahistory.org.za/topic/sharpeville-massacre-21-march-1960>
3. <http://www.sahistory.org.za/archive/sharpeville-massacre-watershed-south-africa-reverend-ambrose-reeves>
4. http://www.waltersisulusquare.co.za/the_charter.html
5. <https://www.gov.za/DOCUMENTS/CONSTITUTION/constitution-republic-south-africa-1996-1>
6. <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng-02.pdf>
7. <https://www.idealclinic.org.za/docs/Posters/PATIENTS%20RIGHTS%20CHARTER%20-%20Eng.pdf>