



# DENOSA CONFERENCE

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## "3RD SOUTH AFRICAN NURSES' CONFERENCE 2016"

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# PROFESSIONAL MISCONDUCT AND ITS AFFAIRS

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# Points for discussion

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- Introduction
- The Legal Perspective
- Litigation vs Professional Misconduct
- PCC vs Court
- Cause of Action the act or omission
- Negligence
- Reasonable Nurse
- Golden thread (Causal nexus)
- Most common charges appearing of cases before the PCC



# Legal perspective

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- The four fundamental responsibilities of nurses being:
  - To promote health;
  - To prevent illness;
  - To restore health; and
  - To alleviate suffering.
- What is/should be inherent in nursing?
- The nurse demonstrates professional values such as respectfulness, responsiveness, compassion, trustworthiness and integrity
- Advocacy for patients ????????



# Legal perspective continued

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- The Constitution of the Republic of South Africa, 1996
- Eights Principles of Batho-Pele
- The Patients' Rights Charter
- The National Health Act 61 of 2003
- The Nursing Strategy
- The Consumer protection Act 68 of 2008
- The Nursing Act 33 of 2005



# Professional Misconduct VS Litigation

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## □ Professional Misconduct =

is defined in the Nursing Act as “unprofessional conduct” means a conduct which, with regard to the profession of a practitioner, is improper, disgraceful, dishonorable or unworthy.

## □ Litigation = To prosecute or defend legal action in Court.



# PCC vs Litigation

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- PCC is not a court of law
- Not a disciplinary hearing
- It is a formal inquest and fact finding process
- Requires a formal process in line with legislation, alternately review to the high court
- Representation
- Sanction vs Order



# Cause of Action the act or omission



Car crash at high speed

Damages to the car

Reckless and negligent driving

Insurance for 3<sup>rd</sup> party



Incident at work

Employer

SAPS

SANC



# Negligence

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- Negligence =
  - A **NURSES** conduct is negligent if:
    - 1 the reasonable **NURSE** in the same circumstance would have foreseen the possibility
      - a) that the particular circumstance might exist; or
      - b) that his conduct might bring about the particular result;
    - 2 the reasonable **NURSE** would have taken steps to guard against such a possibility; and
    - 3 the conduct of the **NURSE** whose negligence has to be determined differed from the conduct expected of the reasonable **NURSE**.





## Negligence (Cont.)

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- The expression of negligence has a dual meaning:
  1. It says that the nurses conduct (act or omission) was performed in a certain way;
  2. It says that the nurses conduct was blameworthy.



# Reasonable Nurse

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- ❑ NOT YOU !!
- ❑ Not the average nurse
- ❑ Not a nurse in a clinic in a rural area
- ❑ Not a nurse in ICU in a private hospital
- ❑ But the reasonable registered nurse or midwife in that situation.
- ❑ An objective test that is applied more subjectively as to suit the nurse to the situation and circumstances.



# Golden Thread (Causal Nexus)

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- ❑ Golden Thread = Causal Nexus = a link from start to finish.
- ❑ In law for a nurse to be seen as the cause of the patients result she must be the Factual and legal cause.
- ❑ 1) Factual cause = *Conditio sine qua non* of result, aka if you think away the nurses act does the patient result change?
- ❑ 2) Legal cause = policy considerations or justifications or *novus actus interveniens*.



# MOST COMMON CHARGES APPEARING OF CASES BEFORE THE PCC

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- **CHARGE 1:**  
You wilfully or negligently failed to continuously monitor the patient and her unborn babies.
  
- **CHARGE 2:**  
You wilfully or negligently failed to keep clear and accurate records.
  
- **CHARGE 3:**  
You wilfully or negligently failed to advocate for the said patient and her unborn babies.
  
- **CHARGE 4:**  
You wilfully or negligently failed to create a safe environment for a two year old patient, namely Patient Peter, who was under your care, causing the patient to sustain second degree burns to both his feet.
  
- **CHARGE 5:**  
You wilfully or negligently failed to seek medical assistance, when the patient's condition warranted such.



# Frequently asked questions

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- ❑ I was already disciplined by my employer. Why is SANC repeating the process?
- ❑ What if my employer expects me to work outside of the scope of my practice?
- ❑ What if the facility is understaffed/having insufficient equipment
- ❑ Direct vs Indirect supervision



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**Have a passion for nursing!**

**Respect yourself and your  
profession, in order to protect your  
profession and for others to  
respect you and your profession!**

😊Thank – you😊