



**EXPLORING THE TRADITIONAL HEALTH PRACTITIONER'S MEDICAL
CERTIFICATE IN THE WORKPLACE**

**By:
Lulu Dlamini
(Student number: 214 585 094)**

**A dissertation submitted in the partial fulfilment of the requirement for the
degree LLM
(Labour Studies)**

**College of Law and Management Studies, at the School of Law, Howard
College**

University of KwaZulu-Natal

**Supervisor
Ms. Rowena Bronwen Bernard
July 2022**

DECLARATION

I, Lulu Dlamini, hereby declare that this dissertation is my original work except where otherwise stated.

This work has not been previously presented in part or in its entirety to any other university for the academic requirements of any degree or other qualification.

I understand what plagiarism is, and the University of KwaZulu-Natal's policy on plagiarism and with such understanding, have cited all relevant sources used.



Signature

17 July 2022

Date

ACKNOWLEDGEMENTS

This dissertation is dedicated to my guardian angels who walked the earth before me. Letta, Masosha, Boy – you will never be forgotten. I would like to also thank Lunathi for always being my light.

To my family and friends, thank you for your unwavering support and understanding when I could not be with you due to my studies.

Lastly, thank you to my supervisor Ms. Rowena Bernard who took me over the finish line as she promised she would. I am grateful for your guidance and support.

ABSTRACT

Section 23(2) of the Basic Conditions of Employment Act calls for proof of illness from employees who are absent from work due to sickness. The most authoritative document to serve as proof in this regard is the medical certificate received from a medical practitioner or any other person certified to diagnose and treat patients and registered with a professional council established by an Act of Parliament. Sick notes are relied upon by employers who often struggle to meet their operational requirements and organisational goals when employees are away from work owing to illness or when employees abuse their sick leave benefits.

Traditional healers are the custodians of indigenous traditional healing. To conduct this healing, they often make use of spiritual guidance from their ancestors and traditional medicine. Those trained in traditional healing are now able to issue lawful medical certificates by virtue of the Traditional Health Practitioners Act 22 of 2007. Once registered with the Interim Council for Traditional Health Practitioners, they become known as traditional health practitioners.

This dissertation will focus on the impact that the sick notes issued by traditional health practitioners have on the South African workplace. The discussion will centre on the known nature of traditional healing and the empowering legislation, concluding that the practice is unsuited to regulation. The dissertation will also discuss the principle of reasonable accommodation and how it should be used to establish the degree to which employers should accept sick notes received from traditional health practitioners and traditional healers alike by referring to examples in case law.

LIST OF ABBREVIATIONS

ABET	Adult Basic Education and Training
Allied Act	Allied Health Professions Act 63 of 1982
ANC	African National Congress
AU	African Union
BCEA	Basic Conditions of Employment Act 75 of 1997
CCMA	Commission for Conciliation, Mediation and Arbitration
HPA	Health Professions Act 56 of 1974
HPCSA	Health Professions Council of South Africa
ICCPR	International Covenant on Civil and Political Rights
Interim Council	Interim Council for Traditional Health Practitioners
LAC	Labour Appeal Court
LRA	Labour Relations Act 66 of 1995
NEPAD	New Partnership for African Development
NQF	National Quality Framework
OAU	Organization of African Unity
Regulations	Traditional Health Practitioners Regulations of 2015
SADC	Southern African Development Community
SCA	Supreme Court of Appeal
The Constitution	The Constitution of the Republic of South Africa
THPA	Traditional Health Practitioners Act 22 of 2007
UKZN	University of KwaZulu-Natal
WHO	World Health Organization

TABLE OF CONTENTS

Cover page	i
Declaration	ii
Acknowledgements	iii
Abstract	iv
List of Abbreviations	v

TABLE OF CONTENTS

1. CHAPTER ONE – INTRODUCTION

1.1 Introduction and background	1
1.2 Rationale	3
1.3 Literature review	4
1.4 Research questions	6
1.5 Methodology of research	6
1.6 Ethical clearance	6
1.7 Limitations	7
1.8 Structure of chapters	7
1.9 Chapter conclusion	8

2. CHAPTER TWO - AN OVERVIEW OF TRADITIONAL HEALING IN SOUTH AFRICA

2.1 Introduction	9
2.2 Who is a traditional healer?	10
2.3 Ukuthwasa	12
2.4 Cultural significance of traditional healers	14
2.5 The role of traditional healers in communities	16
2.6 Services offered by traditional healers	17
2.7 The regulation of traditional healers	17
2.8 Chapter conclusion	18

3. CHAPTER THREE – A LEGISLATIVE ANALYSIS OF THE LAWS REGULATING TRADITIONAL HEALTH PRACTITIONERS

3.1	Introduction	19
3.2	The analysis of international law on traditional health practices	19
3.3	A regional perspective on traditional health practices	21
3.4	A South African legislative analysis on traditional health practices	23
3.4.1	The Constitution of the Republic of South Africa	23
3.4.2	Background to the THPA.....	26
3.4.3	Analysis of the THPA	28
3.5	Section 23(2) of the Basic Conditions of Employment Act	34
3.6	Health Professions and Allied Health Professions Acts	36
3.7	Chapter conclusion	41

4. THE TRADITIONAL HEALER SICK NOTE IN THE WORKPLACE

4.1	Introduction	43
4.2	The importance of a sick note on an employer's operational requirements ...	43
4.3	The impact of the traditional health practitioner's sick note	45
4.4	Sectoral Determinations, 1, 7, 12 and 13	49
4.5	Reasonable accommodation and the traditional healer sick note	52
4.6	Chapter conclusion	61

5. FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1	Introduction	62
5.2	Findings and recommendations	63
5.3	Conclusion	65
	Bibliography	67

CHAPTER ONE

INTRODUCTION

1.1 Introduction and background

Traditional healers play a significant role in the lives of many South African people and in society at large. They have been described as possessing the gift of receiving spiritual guidance from their ancestors and in most cases, engaging in indigenous medical practice.¹ This practice is considered one of the most accessible sources of health care in many countries on the African continent.² Traditional healers are seen also as cultural custodians in African society, influencing not only the manner in which ailments and illnesses are conceived and dealt with, but also the mode of behaviour their patients exhibit through cultural interpretations.³ They are sought after specifically because of their ability to heal through reference to a patient's cultural beliefs.⁴

Traditional healers are held as specialists in techniques, theories, beliefs and customs, and uses of traditional medicine which have not been scientifically proven but have been communicated by ancestors to descendants during traditional health practice.⁵ The techniques and theories employed by traditional healers are communicated and taught with or without written documentation.⁶

Even with the overpoweringly socially accepted use of Western medicine by many in South Africa, it is believed that 80% of the population still make use of the services of traditional healers.⁷ Traditional healing is popular due to its reference to not only physical ailments, but because it also pays attention to mental and cultural forces,⁸

¹ T Sodi, et al 'Indigenous healing practices in Limpopo Province of South Africa: A qualitative study' (2011) 49(3) *International Journal of Health Promotion and Education* 101-110.

² Ibid.

³ N Mbatha, et al 'Sick certificates issued by South African Traditional Health Practitioners: Current legislation, challenges and the way forward' (2022) 112(7) *South African Medical Journal* 129.

⁴ T Zuma et al 'The role of traditional health practitioners in rural KZN, SA generic or mode-specific' (2016) 16(304) *BMC Complementary and Alternative Medicine* 2.

⁵ V De Andrade, 'Traditional healers and modern doctors do not understand each other because they learn different things' South African traditional health practitioners training with regards to hearing impairment (2011) 49(3) *International Journal of Health Promotion and Education* 121.

⁶ Ibid.

⁷ World Health Organization. Traditional Medicine Strategy 2002- 2005 1.

⁸ M Moshabela, T Zuma & B Gaede 'Bridging the gap between biomedical and traditional health practitioners in South Africa' (2016) *Medicine, Political Science South African Health Review* 87 <https://hdl.handle.net/10520/EJC189316..>

impacting the health of patients. Another reason for their popularity is their accessibility to the patients in their communities, facilitating expeditious treatment.⁹

There has for centuries been mistrust between those who advocate exclusive use of biomedical and Western systems and those who advocate for traditional health systems to be more recognised by society.¹⁰ Advocates for Western systems have at the heart of their argument, the fact that traditional healing does not have a body of evidence to support it.¹¹ Professor Ralph Kirsch (UCT) described traditional healers as very caring people who are extraordinarily skilled in psychoanalysis and counselling.¹² He also recognised that there were other execrable healers who regularly poisoned their patients.¹³ This view of traditional healers (and traditional health practitioners) is not isolated or uncommon. Previous legal provisions went as far as banning the use of traditional healers by the public.¹⁴

Employees who seek treatment from traditional healers are often faced with a dilemma when having to account for their period of absence from work. The absence may impact the operational efficiencies of an employer, which requires an employee to submit a medical certificate (sick note) when he or she returns from sick leave to justify this operational disturbance. An employee who seeks medical treatment from a traditional healer faces challenges in this regard when these sick notes are not accepted by employers. Section 23(1) and (2) of the Basic Conditions of Employment Act¹⁵ (BCEA) require that an employee who stays away from work due to medical reasons must, in certain circumstances, provide an employer with a medical certificate that is issued and signed by a medical practitioner, or any other person certified to diagnose and treat patients and who is registered with a professional council by an Act of Parliament.

⁹ A Abrams, T Falkenberg, C Rautenbach, M Moshabela, B Shezi, S van Ellewee and R Street, 'Legislative landscape for traditional health practitioners in Southern African development countries: a scoping review' 10(1) *BMJ* 1.

¹⁰ M Moshabela, T Zuma & B Gaedenote 8 at 85.

¹¹ R Kale, 'Traditional Healers in South Africa: A Parallel Health Care System' (1995) 6(310) *BMJ* at 1182.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Health Act 56 of 1974.

¹⁵ Act 75 of 1997.

Prior to the enactment of the Traditional Health Practitioners Act¹⁶ (THPA) the practitioners envisioned by section 23(2) of the BCEA did not include traditional healers. The enactment of the THPA and the subsequent establishment of a professional council, allowed for the registration of traditional healers who would then become known as traditional health practitioners to satisfy the registration requirements of the BCEA.¹⁷

The Interim Council for Traditional Health Practitioners (Interim Council) is the professional body responsible for the registration of traditional health practitioners.¹⁸ Further to this, the primary duty of the Interim Council is to regulate those within its sector,¹⁹ allowing the registered practitioners to issue valid sick notes as directed in section 23(2) of the BCEA.

While this has been seen as a victory by many who have been hoping for the recognition of traditional healers in the mainstream health care sector, it has not been received in the same positive light by all parties involved, such as employers in the workplace – leading to the purpose of this paper which is to discuss the validity and reliability of medical certificates issued by traditional health practitioners in the South African workplace. It will be shown that while regulation has been called for and inclusion celebrated, it has led to an impracticality in that medical certificates issued by traditional health practitioners lack validity and reliability by virtue of a registration process that is not of standard and uniform application. A detailed discussion of the THPA²⁰ and regulations in relation to medical certificates is to follow in this dissertation.

1.2 Rationale

The research conducted in this dissertation aims to establish the status and impact of a traditional health practitioner's sick note in the South African workplace. With the enactment of the THPA legitimising sick notes from traditional health practitioners in terms of the BCEA,²¹ it will be shown that full credibility cannot be prescribed to these

¹⁶ Act 22 of 2007.

¹⁷ Section 21 of the THPA.

¹⁸ Section 6(j) of the THPA.

¹⁹ Section 5(g) of the THPA.

²⁰ Act 22 of 2007.

²¹ Act 75 of 1997.

sick notes on this basis alone. In the absence of specific requirements being formulated and perfected through practice, the validity of these notes remain a concern for employers.²²

The research undertaken in this dissertation will also highlight the importance of sick notes and the cultural clash that takes place when an employee's cultural beliefs negatively impact an employer's business requirements. It is the purpose of this study, with reference to the dynamic nature²³ of traditional healing, to show that sick notes by traditional health practitioners negatively impact and strain relations between employees and employers as there is not enough legislative regulation pertaining to these notes, making their validity questionable, and necessitating an exercise of reasonable accommodation by employers.

1.3 Literature review

Traditional healers remain important for the primary health care and cultural beliefs of millions of South Africans.²⁴ They offer alternative medical assistance which relies on spiritual guidance from the ancestral world.²⁵ De van Niekerk writes that the cultural beliefs held by people are part of their significant truths.²⁶ They form part of the domain of truth known as *mystica*, whereby the beliefs in themselves are not confirmed by studies or research findings.²⁷ In the absence of such confirmation, it would make legislative regulation a challenging task.

Attempts have, however, been made to incorporate the traditional healing practice into the national health legislative framework through the THPA which established the validity of sick notes issued by traditional health practitioners registered in terms of this Act. Rautenbach states that with only the THPA (and its accompanying regulations)

²² B Tshela, 'Traditional health practitioners and the authority to issue medical certificates' (2015) 105(4) *SAMJ* 279.

²³ N Mlisa 'Encountering the other: Jungian analysts and traditional healers in South Africa Part III: The traditional health practitioner's stance and the world view' (2020) 65(1) *The Journal of Analytical Psychology* 212-215.

²⁴ R Street, M Smith, M Moshabela, B Shezi, C Webster and T Falkenberg, 'Traditional health practitioners and sustainable development: a case study in South Africa' (2018) 165(4) *Public Health* at 2.

²⁵ Sodi note 1 above.

²⁶ J De V van Niekerk 'Traditional healers formalised' (2012) 102(3) 3 *SAMJ* 105.

²⁷ *Ibid.*

as a source for the incorporation of traditional healers into the existing national health legislative framework, there remains a large vacuum to be filled for the practical use of traditional health practitioner medical certificates.²⁸ As remarked by Chenia, the absence of key provisions in this framework, leave the legal position of traditional healer sick notes unchanged.²⁹ This view is supported by Mbatha et al who recognise that the practice remains informal, partially regulated and does not legally support sick notes issued by traditional health practitioners.³⁰

It is to be noted, however, that whilst sick notes issued by unregistered traditional healers have been accepted by employers and validated by South African courts,³¹ they have not been accepted as equal to those from other conventional practitioners. In the case of *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi*,³² acceptance of sick notes constituted recognition of the right to cultural expression in the workplace. Bellengere and Spurrett state that a lower standard for traditional healer sick notes is identified,³³ based on the criteria for a standard medical certificate as issued by a medical practitioner.³⁴ This is an acceptable statement explained by the incompatibility of traditional healing with the current medical registration system.³⁵

While employees make use of the services of traditional healers as part of their rights to cultural expression and to elect a health provider of their choice, the concerns of an employer are often based on their business needs. The formalities demanded by regulation through the THPA tend to impede peaceful relations between the two parties. Rycroft points out that there is provision for traditional healer certificates in some sectoral determinations which are not subject to the provisions of the THPA.³⁶

²⁸ C Rautenbach 'Some comments on a new legislative framework for female traditional healers in South Africa' (2008) *Emory International Law* 116.

²⁹ M Chenia 'Traditional healers and sick leave' (2019) 22 *PER* 18.

³⁰ Mbatha note 3 above.

³¹ *Ibid.*

³² (2012) 33 *ILJ* 2812 (LAC).

³³ A Bellengere and D Spurrett, 'A discordant note: *Kievits Kroon Country Estate v Mmoledi*' available at www.academia.edu 488.

³⁴ *Ibid.*

³⁵ J De V van Niekerk note 26 above at 106.

³⁶ A Rycroft 'Accommodating religious or cultural beliefs in the workplace: *Kievits Kroon Country Estate v CCMA; Lamina v Green Four Security; POPCRU v Department of Correctional Services*' (2011) 23(1) *SA Mercantile Law Journal* 111.

With reference to the above literature, this dissertation aims to show that it is the regulation of traditional healing as expressed in the THPA that contributes to the negative impact that sick notes issued by traditional health practitioners have on the workplace. As expressed by Bernard, the exercise of reasonable accommodation by employers is necessary in matters which concern the cultural and religious beliefs of employees to ensure harmony.³⁷

1.4 Research questions

Within this dissertation, the main research question to be considered is:

1.4.1 What is the impact of the traditional health practitioner's medical certificate in the South African workplace?

The above question is answered, through the consideration of the following sub-questions within the text.

1.4.2 Is there adequate legislative regulation for traditional medical certificates?

1.4.3 To what extent do traditional healer medical certificates impact on the South African workplace?

1.4.4 To what extent are employers reasonably expected to accommodate sick notes received from traditional health practitioners?

1.5 Methodology of research

The research method to be used in this dissertation is desk based or desktop. It will comprise of an analysis of primary sources such as statutes, legislation and case law. There will also be use of secondary sources such as academic and journal articles. These sources of information have been accessed from Hein Online, Google Scholar, Sabinet Online and through web-based searches conducted on Google. No information has been sourced through the interviewing of third parties, surveys, or questionnaires.

1.6 Ethical clearance

Ethical clearance for this research paper has been applied for and granted by the UKZN research ethics committee. Proof of this approval, which is communicated as

³⁷ R Bernard, R 'Reasonable accommodation in the workplace: To be or not to be?' (2014) 17(6) *PER* 2888.

an exemption, is attached to this dissertation.

1.7 Limitations

Although the THPA was enacted approximately 15 years ago, there is very little case law that speaks directly to the topic, the main reason being that there is no record of any traditional health practitioners being registered by the Interim Council.³⁸ The absence of any proven registration of a traditional health practitioner and subsequent issuing of a sick note, gives no direct evidence of the impact of a traditional health practitioner. All sick notes from traditional healers approved by employers since the enactment of the THPA, have therefore not been in compliance with the law, but rather courtesy to respect for the sincere cultural belief that employees hold.³⁹

With regard to the above, the research question is still adequately answered by research into the nature of traditional healing, relevant legislation which includes the Traditional Health Practitioner Regulations of 2015 (Regulations) and case law that provides context to the topic and recommendations given.

1.8 Structure of chapters

Chapter one serves as the introduction of the topic. Here, an overview is provided along with the research questions, methodology and topic limitations.

Chapter two provides an overview of traditional healers and the nature of traditional healing. With that, the cultural and societal importance of traditional healers in South Africa is discussed.

Chapter three focuses on the legislative landscape upon which the THPA is built. The legislative background and an analysis thereof is set out, whereby the role played by international and regional institutions such as the World Health Organization, the African Union and Southern African Development Community are discussed. The South African Constitution (the Constitution) and provisions regarding the right to culture and religion are also analysed including specific provisions within the THPA whose relevance is established from the information presented.

³⁸ Maserumule Corporate Employment Law *Medical certificates from traditional health practitioners 2.*

³⁹ Mbatha note 3 above.

This chapter also discusses legislation surrounding sick notes in terms of section 23(2) of the BCEA. The relevant training, qualifications and codes of conduct of the practitioners able to issue such sick notes are discussed in this chapter.

Chapter four provides an analysis of the requirements of traditional health practitioner's sick note in relation to the workplace. By establishing the importance of a sick note for an employer's operational needs, the impact of the sick note will be evaluated. The principle of reasonable accommodation in the workplace is discussed, with examples of how the principle has been applied in case law.

Chapter five offers a section on the findings within the chapters, conclusion of the discussion and recommendations.

1.9 Chapter conclusion

The above chapters offer an overview of the topic, providing a map which details the background of the topic, rationale behind the study and the research questions to be answered. The research methodology, structure of the dissertation and limitations have also been set forth within this chapter.

CHAPTER TWO AN OVERVIEW OF TRADITIONAL HEALING IN SOUTH AFRICA

2.1 Introduction

South Africa is often described as a rainbow nation with reference to its many races, cultures and religions.⁴⁰ With South Africa being a culturally rich and diverse nation, it was necessary for the Constitution of the newly democratic country to recognise and protect all cultural beliefs. Central to the cultural practices of the indigenous South African people is the belief in traditional healing practices.⁴¹ The importance of cultural heritage is seen in the millions of people who use natural products and traditional healthcare approaches to meet primary healthcare needs.⁴²

Traditional health practice is described as the performance of an activity or service based on traditional philosophy and using traditional medicine.⁴³ The object of this practice is often to diagnose, treat or prevent a physical or mental illness.⁴⁴ The custodians of traditional healing in South Africa are traditional practitioners.⁴⁵

This form of healing practice was in practice before Western medicine was introduced to South Africa by colonisation in the 17th Century.⁴⁶ It is still very popular today and evident in cultural practices, despite discreditation during both colonialism and the time of apartheid.⁴⁷ Its popularity is further evident in the different races of people who consult with traditional healers and train under them, who now include individuals of European ancestry.⁴⁸ Traditional healers who offer such healing are preferred by many as they offer an opportunity for an individual to improve their personal well-being and

⁴⁰ M Prinsloo and E Huysman, 'Culture and religious diversity: Are they effectively accommodated in the South African workplace?' (2018) 22(1) *Law Democracy & Development* 26-38.

⁴¹ Street note 24 at 2.

⁴² Ibid.

⁴³ Traditional Health Practitioners Act 35 of 2004: Definition section.

⁴⁴ Ibid.

⁴⁵ R M Van Rooyen et al 'Evidence-based recommendations to facilitate professional collaboration between allopathic and traditional health practitioners' (2017) 22 *Health SA Gesondheid* 292.

⁴⁶ P Guma and M Sekgothe 'The historical relationship between African indigenous healing practices and Western-orientated biomedicine in South Africa: A challenge to collaboration' (2020) 76(4) *HT Section Theologiese Studies / Theological Studies* 2.

⁴⁷ Z Marovic & M M Machinga 'African Shamanic knowledge and transpersonal psychology: Spirits and healing in dialogue' (2017) 49(1) *Journal of Transpersonal Psychology* 32.

⁴⁸ R Thornton 'The transmission of knowledge in South African traditional healing' (2009) 79(1) *Journal of the International African Institute* 17.

spiritual needs and not just physical ailments.⁴⁹

This chapter discusses the concept of traditional healing in South Africa by providing a detailed description of its custodian, the traditional healer. Their unique form of practice and cultural and societal significance will be discussed as well as other reasons why many people find them indispensable.

2.2 Who is a traditional healer?

It is necessary to contextualise who is a traditional healer and the role such person plays in the healing process, to understand the importance and relevance of the traditional sick note and its applicability in the workplace. Traditional healers are defined in different ways because they offer different services to different people with different needs.⁵⁰ A simple and widely accepted definition, however, is that they are people who engage in indigenous medical practice.⁵¹ This practice is indigenous in that the African conception of the nature and origin of the universe are used to heal patients and promote their well-being.⁵² They are gifted and possess the ability to receive spiritual guidance from the ancestral world.⁵³ This ability is an endowment in that a person does not elect to become a traditional healer, but a facility bestowed upon him or her by their ancestors.⁵⁴

There are in principle three main categories of traditional healers found in South Africa: diviners (*izangoma*), herbalists (*izinyanga*) and faith healers (*abathandazi*).⁵⁵

Diviners are seen as the most senior of healers on account of their ability to communicate with ancestors and their mystical powers.⁵⁶ They operate within the traditional religious supernatural context as mediums with ancestral spirits.⁵⁷ They undergo a training process known as *ukuthwasa* which can last between six months

⁴⁹ Rautenbach note 28 above at page 115.

⁵⁰ Guma and Sekgothe note 46 above.

⁵¹ A Devenish 'Negotiating healing: The politics of professionalization amongst traditional healers in KwaZulu-Natal' *OpenUCT* 2.

⁵² Sodi note 1 above.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Van Rooyen note 45 above at page 35.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

and 10 years.⁵⁸ The training conducted is secret and not public knowledge as traditional mastery is to be passed in due course down to the diviner's initiates.⁵⁹

Herbalists are widely known for their specialisation in the use and preparation of herbs and medicinal mixtures (*muti*).⁶⁰ They are also called traditional doctors because of their ability to treat diseases.⁶¹ Herbalists have in-depth knowledge of curative herbs and natural treatments which not only heal patients but also focus on helping the patient's entire family.⁶² They are generally trained by family members as the knowledge is passed down from generation to generation.⁶³ They enter a strict apprenticeship programme of varying durations as long as a few years.⁶⁴

Faith healers use the power of prayer to heal and provide their patients with holy water and ash to aid this healing.⁶⁵ The power could originate from the Holy Spirit or from ancestral spirits.⁶⁶ When emerging from ancestral spirits, faith healers might also have the power of divination.⁶⁷ There is no specific training programme or duration for one to become a faith healer as it is a process consisting of prayer and purification through rites and rituals.⁶⁸

The next two types of traditional healers do not form part of the main categories of healers but are important for the discussion in the next chapter of this dissertation. Traditional birth attendants (*ababelithisi*) are typically elderly women who have vast knowledge of pregnancy issues.⁶⁹ They teach expecting mothers behaviours to avoid during pregnancy, methods for their ritual bathing and the disposal of placentas.⁷⁰ In order to qualify to be trained as a birth attendant, the trainee must have given birth to a minimum of two children for them to appreciate the joy and agony associated with

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Sodi note 1 at age 102.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Guma and Sekgothe note 46 at page 35.

⁶⁶ Sodi note 1 at 102.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ G Setswe "The role of traditional healers and primary health care in South Africa" (1999) 4(2) *Health SA/Gesondheid* 57.

childbirth.⁷¹ It has been reported that some traditional birth attendants have completed apprenticeships of 15 to 20 years before formally qualifying.⁷²

Traditional surgeons are qualified and recognised by leaders in their communities to perform male circumcisions.⁷³ They are specialists in this procedure which is said to traditionally take a boy out of adolescence, bestowing upon him the rights and responsibilities of manhood.⁷⁴ The training duration here again varies; however, in May and June of 2007, a two part training intervention by the Department of Health took place and covered all aspects of male circumcision.⁷⁵ Some topics covered include lessons on initiation rites and the concept of initiation into manhood.⁷⁶

Traditional healers can at times specialise in more than one of the above categories, most commonly in the first three categories discussed.⁷⁷ The next section discusses the most recognised and accepted training programme that traditional healers undergo that qualifies them to diagnose and heal their patients.

2.3 Ukuthwasa

Although not integrated into the National Quality Framework (NQF) as an official educational system,⁷⁸ some traditional healers are trained under a structured and well-known programme known as *ukuthwasa*. This programme has key elements accepted by other healers.⁷⁹ *Ukuthwasa* is said to familiarise divination initiates with communication with the realm of spiritual and non-material realities.⁸⁰ Wreford writes that the process starts with what she calls a 'sickness of calling' ('the calling').⁸¹ It has also been reported that other initiates undergo a spiritual experience when being

⁷¹ Ibid.

⁷² Ibid.

⁷³ M Mokgobi 'Understanding traditional African healing' (2014) 20 (Suppl 2) *Afr J Phys Health Educ Recreat Dance* 6.

⁷⁴ K Peltzer, A Nqeketo, G Petros and X Kanta, "Evaluation of a safer male circumcision training program for traditional surgeons and nurses in the Eastern Cape, South Africa"(2008) 5(4) *Afr J Tradit Complement Altern Med* 346.

⁷⁵ Ibid 347.

⁷⁶ Ibid 346.

⁷⁷ Zuma note 4 at 8.

⁷⁸ R Street, "Unpacking the new proposed regulations for South African traditional health practitioners' (2016) 106(4) *SAMJ* 326.

⁷⁹ Guma and Sekgothe note 46.

⁸⁰ J Wreford, 'Long-nosed hybrids? Sharing the experiences of white izangoma in contemporary South Africa' (2007) 33(4) *Journal of Southern African Studies* 833.

⁸¹ Ibid 833.

called.⁸² The calling is therefore not the same for all who experience it, but it generally presents itself as an emotional experience or as a dramatic emotional event.⁸³ The time when the calling takes place is dependent on the initiate's ancestors (*amadlozi*). There is no predetermined time when the selection and gifting of initiates takes place. It has been found that some initiates are selected during childhood.⁸⁴ It is therefore important to note that it is the ancestors who control the process for initiates and the initiates may begin their training before reaching the age of maturity.⁸⁵

While this may give the impression that ancestors act as overbearing spiritual beings, they have been described as compassionate beings who still show an interest in the lives of their living relatives by supporting, protecting and empowering them as they work together towards achieving various goals.⁸⁶

As the living are dynamic, so are their ancestors,⁸⁷ with this being seen in the various ways that they communicate with initiates throughout the process of *ukuthwasa*. In particular, before acceptance of the calling, some initiates encounter a snake in water.⁸⁸ Many initiates report powerful ancestral dreams.⁸⁹ It is through these dreams that ancestors guide and train initiates to communicate with the previously mentioned non-material realities and the collective unconscious.⁹⁰ The calling lasts until it has been recognised and diagnosed, and the initiate acknowledges and accepts the call.⁹¹ Once accepted, initiates begin a process to become a new person, dying from their old way of life.⁹²

Ancestors not only select which descendant on whom to bestow the gift of divination or prophecy, but will also choose the trainer and the training process.⁹³ Initiates are

⁸² Zuma note 4 at 6.

⁸³ Wreford note 80 at 833.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Setswe note 70 at 2.

⁸⁷ Mlisa note 23 above.

⁸⁸ Sodi note 1.

⁸⁹ *Ibid.*

⁹⁰ Mlisa note 23 at 214.

⁹¹ Wreford note 80 at 834.

⁹² Sodi note 1.

⁹³ Zuma note 4 at 7.

taught by a trainer/teacher (*igobela*) or a school (*mpandze*).⁹⁴ They are customarily expected to live with these teachers during their training.⁹⁵ Various methods of healing and strengthening are taught to candidates, which are accompanied by the performance of rituals, confessional dances, and other events.⁹⁶ All of this is done while initiates undergo ritualised humiliations which are coupled with other auguries of humility including abstinence, food prohibitions and the ban on cutting their hair.⁹⁷

The process of *ukuthwasa* can occur over a number of years and its completion reveals itself in different ways. A graduation ceremony is held where initiates emerge as new people to the acknowledgement of their peers and other family members.⁹⁸ It is accepted at this stage that the initiate is now competent to communicate with the ancestral authority in order to heal others.⁹⁹

Throughout the above process of *ukuthwasa*, there is no standard training process followed by initiates or curriculum offered. It is a spiritual journey in the control of the ancestors of the initiates.¹⁰⁰

2.4 Cultural significance of traditional healers

Cultural beliefs remain powerful even in the absence of logic and research findings.¹⁰¹ They may take different forms and can be found at many levels through signs and symbols in everyday life.¹⁰² They have been defined as

'patterned ways of thinking, feeling and reacting, acquired and transmitted mainly by symbols, constituting the distinctive achievement of human groups, including their embodiment in artefacts; the essential core of culture consists of traditional ideas and especially their attached values.'¹⁰³

This definition shows that culture finds its foundation in tradition and tradition is fed by

⁹⁴ Guma and Sekgothe note 46 at 18.

⁹⁵ Wreford note 80 at 834.

⁹⁶ Sodi note 1.

⁹⁷ Wreford note 80 at 834.

⁹⁸ Ibid 835.

⁹⁹ Ibid.

¹⁰⁰ Ibid at 833.

¹⁰¹ Van Niekerk note 26.

¹⁰² Maserumule note 38 at 27.

¹⁰³ Ibid.

culture.¹⁰⁴

It has been found that the concepts of illness and the supporting health care systems in any society are connected to the existing cultural beliefs of the people within such society.¹⁰⁵ This was found to be true in both African and Western societies.¹⁰⁶ To elaborate, the different cultural groups (and societies) would formulate different ways of interpreting illnesses and generate their own special methods and remedies to treat such illness.¹⁰⁷ Mokgobi uses the example of schizophrenia to illustrate this.¹⁰⁸ This well documented mental health disorder is generally seen in the West as a condition brought upon by biological and chemical influences, but for traditional African societies for example, it is brought upon as a result of either witchcraft or the presence of ancestors in one's life.¹⁰⁹ Neither one of the two constructions is false, but do show how illness can be interpreted and understood in different ways depending on the cultural beliefs and world views held by individuals.¹¹⁰ By subscribing to either of these constructions, an individual would most probably visit a practitioner who shares the same view of an illness or condition as they do.

Those who choose to treat their conditions in a cultural manner would rely on the aforementioned custodians to provide guidance and remedies for their illness.¹¹¹ Traditional healers are called upon by their patients not only for their experience and skills, but because they explicitly link the illness with the patient's social and cultural beliefs.¹¹² In African cultures, traditional healers are asked to use their gifts and training, to connect with those in the ancestral plane to invoke the necessary healing.¹¹³ Western practitioners are unable to do this because they are not trained to heal in this manner and lack the necessary connection with the ancestral plane to access the needed healing. This healing would need to be in accordance with traditional practices and with the use of traditional medicine. As indigenous African

¹⁰⁴ Ibid 28.

¹⁰⁵ Setswe note 70 at 4.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid 5.

¹⁰⁹ Ibid.

¹¹⁰ Ibid 4-5.

¹¹¹ Ibid 7.

¹¹² Zuma note 4 at page 2.

¹¹³ Setswe note 70 above.

people have a deep respect and desire for a balanced way of life grounded in a spiritual relationship, the links connecting them to their cultural values must be respected.¹¹⁴

2.5 The role of traditional healers in communities

Traditional healers play pivotal roles in the lives of the people they serve.¹¹⁵ Their insight into political and social issues have in the past enabled them to be vital components in social reconstruction and rebuilding.¹¹⁶ This act is extended also to the family units of patients. Traditional healers usually consult individual patients and call for family consultations where necessary, in order for them to probe into the patients' existing physical, social and mental problems. By doing this, they are able to develop ways to positively change the family unit.

Traditional healers are highly respected members of the communities they serve, having gained credibility and acceptance on account of their historical family backgrounds in the context of the same powerful ancestral lineage in these communities.¹¹⁷ The locality of healers helps to resolve issues of mutual trust and possible language barriers between parties.¹¹⁸

In 2010, it was estimated that there were more than 250 000 traditional healers and only 28 000 medical doctors in the country.¹¹⁹ These estimated numbers support the reason why traditional healers are the first primary health point of contact for many South Africans. This is particularly true for people who live in rural areas which are generally poorly serviced by government public health institutions.¹²⁰ With traditional healers working within the communities, they are more geographically accessible to their patients,¹²¹ making visits convenient by saving travel and medical costs. Patients also appreciate being charged only once they have been healed.¹²² However,

¹¹⁴ Van Rooyen note 45 at page 32.

¹¹⁵ Setswe note 70 at page 7.

¹¹⁶ Ibid.

¹¹⁷ Mbatha note 3 above.

¹¹⁸ Rautenbach note 28 at page 115.

¹¹⁹ Zuma note 4 at page 2.

¹²⁰ Rautenbach note 28 at page 114.

¹²¹ Setswe note 70 at page 58.

¹²² B King 'We pray at the church in the day and visit the sangomas at night' Health discourses and traditional medicine in rural South Africa' (2012) 102(5), *Geographies of Health* 1173.

traditional healers are not the 'poor man's doctor';¹²³ some of their services and treatments cost the same as that of other health practitioners.¹²⁴

2.6 Services offered by traditional healers

As mentioned earlier in this chapter, traditional healers offer a wide scope of services. They are known to market their services and abilities to help with matters regarding the attraction of power, love, security and money.¹²⁵ Other known services include the treatment of unexplained pains, headaches, sexually transmitted diseases and strokes. They also provide counselling and social worker functions as well as assisting with matters relating to ancestral, supernatural and psychosocial problems.¹²⁶ They are also often consulted to assist in matters where patients experience difficulties in finding employment.¹²⁷

2.7 The regulation of the traditional healing

As comprehensively described above, the nature of traditional healing remains unintelligible because 'the focal point of traditional healing is within the ancestral and spiritual realms.'¹²⁸ As the entire process of healing is reliant on spiritual bodies and elements, little room is available to conclusively understand and control the healing that is evoked by traditional healers. The mystical nature of traditional healing is accepted by believers and those sharing a similar cultural heritage.¹²⁹

The recognition of the constitutional rights to cultural and religious freedom of association, found in sections 30 and 31 of the Constitution,¹³⁰ applies to traditional healers, by virtue of the enactment of the THPA.¹³¹ The THPA provided a legal framework for traditional healers to form part of the existing national health system.¹³² By means of registration with the Interim Council, traditional healers receive the status of traditional health practitioner and are able to issue valid sick notes in terms of

¹²³ Guma and Sekgothe note 46 above.

¹²⁴ Ibid.

¹²⁵ Van Niekerk note 26 above.

¹²⁶ T Nyundu and K Naidoo, 'Traditional healers, their services and the ambivalence of South African youth' (2016) 14(1) *Unisa Press Journals* 2.

¹²⁷ Ibid.

¹²⁸ Zuma note 4 above at page 11.

¹²⁹ Van Niekerk note 26 above.

¹³⁰ The Constitution of the Republic of South Africa.

¹³¹ Act 22 of 2007.

¹³² Rautenbach note 28 above at page 116.

section 23(2) of the BCEA.¹³³ The THPA has also outlawed the practice of traditional healing without registration to the Interim Council, making it necessary for all practitioners to comply with the regulations set out by the THPA.¹³⁴

The THPA has regulations which aim to support it and to provide certainty and consistency amongst traditional health practitioners and those who use their services.¹³⁵ In reality these regulations seem disconnected from the nature of traditional healing fully discussed in the preceding sections.

The Interim Council has also neglected to provide a Code of Conduct setting out information relating to ethical considerations and what traditional health practitioner sick notes should contain. This would be in line with what has been done by the Health Professions Council of South Africa and the Allied Health Professions Council of South Africa.¹³⁶

2.8 Chapter conclusion

This chapter has described the nature of traditional healing, its appeal, the services it provides and its importance in communities. The specific topics covered have been selected to not only show the key role played by traditional healers but why official recognition of these healers was necessary. In doing this however, the unsuitability of regulation has been underlined.

The next chapter consists of two parts – the first will provide a legislative analysis for traditional health practitioners and the second, the issues around the sick note in terms of South African law.

¹³³ Section 21 of the THPA.

¹³⁴ Section 49 of the THPA.

¹³⁵ Section 2 of the THPA.

¹³⁶ Section M of the Code of Ethics, Allied Health Professions Act and section 2 of the General Ethical Guidelines for Health Care Professions booklet 1.

CHAPTER THREE

A LEGISLATIVE ANALYSIS OF THE LAW REGULATING TRADITIONAL HEALTH PRACTITIONERS

3.1 Introduction

Traditional healers have gained renewed recognition through the enactment of the THPA. While they have long been supported by organisations such as the World Health Organization (WHO) and the African Union (AU) by way of appeals for traditional healers to be regulated through national laws and policies, the task has always been seen as daunting because of what is perceived as applying rigid legislation to the free-flowing nature of divinity and spirituality.¹³⁷ Irrespective of the support for regulation by others, there is less support seen from traditional healers, who believe that working in an organised group is not only untraditional, but not acceptable in the eyes of the ancestors.¹³⁸

This chapter covers the legislative background to the enactment of the THPA of 2007. A brief discussion regarding the support for the regulation of traditional healers by international and regional institutions is undertaken in the chapter, showing how these efforts contributed to the enactment of the THPA. Lastly, South African national laws relating to sick leave are discussed in this chapter.

3.2 The analysis of international law on traditional health practices

The WHO is an agency of the United Nations which specialises in international public health.¹³⁹ Since its inception in 1948, it has been responsible for supporting, researching and providing guidelines that help countries address public health issues.¹⁴⁰

From 1974, the African Regional Committee of the WHO (Regional Committee) attempted to critically interrogate the role to be played by traditional medicine in health

¹³⁷T W Bennet and A Pillay 'The Natal and KwaZulu codes: A case for repeal' (2003) 19(2) *South African Journal on Human Rights* 219.

¹³⁸ Rautenbach note 28 at page 17.

¹³⁹ World Health Organization Brochure (2007) 2.

¹⁴⁰ Ibid 4.

services in Africa.¹⁴¹ In 1976, The Regional Committee defined traditional health practitioners as people recognised by their communities as competent in providing 'health care using vegetable, animal and mineral substances and other methods based on social, cultural and religious backgrounds as well as on the knowledge and beliefs that are prevalent in such communities regarding physical, mental and social well-being and the causation of disease and disability.'¹⁴² This definition came with a growing awareness of the pivotal role played by traditional health practitioners in their communities and in many health care systems around the world.¹⁴³ This was soon followed by a resolution being passed at the 13th World Health Assembly of the WHO in 1977 which aimed to promote the development of training and research within the field of traditional medicine.¹⁴⁴ This resolution urged governments to afford importance to the use of traditional health systems with appropriate regulations.¹⁴⁵ Other resolutions were then accepted by other countries, in hopes of supporting the use of traditional healers in national health care systems.¹⁴⁶

The Alma-Ata Declaration was introduced at the International Conference on Primary Health Care in 1978¹⁴⁷ calling for a holistic definition of health which included the spiritual aspects of an individual in the context of their environmental and social surroundings.¹⁴⁸ This contributed significantly to the official recognition of traditional healing, in that the understanding of healing systems would be based on a holistic understanding of health.¹⁴⁹ The Alma-Ata Declaration further highlighted the necessary mobilisation of traditional medicine to ensure the ideal of health care for all could be realised.¹⁵⁰

The WHO identified four types of health care systems relating to the status and

¹⁴¹ J Summerton 'The incorporation of African traditional health practitioners into the South African health care system' (2006) 38(1) *Acta Academica* 147.

¹⁴² SA Parliament Meeting Cape Town, WHO Definitions, 'Policy and Regulation of Traditional Medicine: Practitioners, practices and products/ Herbal Medicines' 2.

¹⁴³ World Health Organization *Guidelines for training Traditional Health Practitioners in Primary Health Care* 3.

¹⁴⁴ THPA note 131 above.

¹⁴⁵ Devenish note 51 above at 5.

¹⁴⁶ THPA note 131 above.

¹⁴⁷ *Ibid.*

¹⁴⁸ Devenish note 51 above at 2.

¹⁴⁹ *Ibid.*

¹⁵⁰ Summerton note 141 above.

position of traditional healing in societies where both traditional and western systems existed.¹⁵¹ The first type is an exclusive system which allows for the sole practice of conventional (biomedical) medicine, outlawing all other forms of healing.¹⁵² A tolerant system is one where a country's health care system is based on conventional medicine but, there is tolerance for certain practices of traditional healing.¹⁵³ The third type of health system is an inclusive health system.¹⁵⁴ This system recognises traditional healing despite it not being formally integrated into all aspects of health care within that society's health care system.¹⁵⁵ The integrated system (the fourth type of system) is advocated by the WHO,¹⁵⁶ describing the complete incorporation of all health care systems present in a society, to heighten the standard of health care of all people within that particular society.¹⁵⁷

The inclusive system existed in South Africa before the enactment of the THPA.¹⁵⁸ It provided inadequate recognition of traditional healing and fell short of the intended goal of the WHO. The integrated system is the WHO's preferred system, shared by African states,¹⁵⁹ taking the form of the WHO's 2008 draft policy on African traditional medicine.¹⁶⁰ What this policy sought to achieve for South Africa in particular, was the creation of a framework to institutionalise traditional medicine and healers alike into national health systems and services.¹⁶¹

3.3 A regional perspective on traditional health practices

Despite the WHO's policy to have traditional healing practices placed alongside those of their western counterparts, more needed to be done by regional unions and organisations. What was seen in many nations were systems of co-existence and not of collaboration as required.¹⁶²

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Summerton note 141 above at 145.

¹⁶⁰ Mbatha note 3 above.

¹⁶¹ Ibid.

¹⁶² Summerton note 141 above at 149.

The AU is the successor of the OAU, which was Africa's first post-independence continental institution.¹⁶³ The OAU was dismantled in September 1999 when the Sirte Declaration called for the establishment of a new continental organisation to continue its work.¹⁶⁴ The AU was launched in 2002 with the hope of African leaders that cooperation and integration of African states would be increased and ultimately Africa would see growth and economic development.¹⁶⁵

Article 3 of the Constitutive Act of the AU lists its intention to work with international partners to eradicate preventable diseases and to promote good health in the continent.¹⁶⁶ Evidence of this was shown by the AU declaring the Decade of African Traditional Medicine between the years 2001 and 2010 in support of many WHO initiatives.¹⁶⁷ This took place at the Lusaka Summit of Heads of State whereby the action plan for this initiative was adopted.¹⁶⁸ In making this a significant and worthwhile plan, the New Partnership for Africa's Development (NEPAD) further emphasised the importance of traditional medicine. This would be a key strategy in the AU's plan beyond the nominated decade.¹⁶⁹

Another African regional institution that has made efforts to realise the WHO's objectives is the Southern African Development Community (SADC), which was formalised in 1992 after operating as a development coordinating conference since 1980.¹⁷⁰ South Africa is one of SADC's 15-member states and as such, is a party to SADC's Declaration of Health, which was signed in 1999.¹⁷¹ According to article 20 of this Declaration, SADC member states are directed to develop mechanisms to cooperate with traditional health practitioners and to also regulate traditional healing within their countries.¹⁷² Although not much else is said regarding traditional health practitioners in this Declaration, SADC is one amongst a few institutions that has

¹⁶³ African Union available at <https://au.int/en/overview> accessed 23 January 2022.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Article 3(n) of the Constitutive Act of the African Union.

¹⁶⁷ Summerton note 141 above at 148.

¹⁶⁸ Government Gazette 31271, Draft Policy on Traditional Medicine 2008 2.

¹⁶⁹ Ibid.

¹⁷⁰ Southern African Development Community, <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/>, accessed 23 January 2022.

¹⁷¹ A Abrams, T Falkenberg, C Rautenbach, M Moshabela, B Shezi, S van Ellewee and R Street note 9 above at 2.

¹⁷² Ibid.

defined traditional health practitioners.¹⁷³

The SADC inter-ministerial meeting on traditional medicine in 2005 again recommended that member states provide a legal framework for the recognition of African Traditional Medicine.¹⁷⁴ This inter-ministerial subcommittee advocated for resources to be mobilised not only for financial, but also for technical support for the implementation of this legal framework.¹⁷⁵ All of this was to support the African traditional medicine as a discipline and to provide structures for its effective institutionalisation.¹⁷⁶

Abrams and others¹⁷⁷ focus on the legislative landscape for traditional health practitioners in the SADC region, revealing that only four southern African countries have been able to enact legislation relating to these practitioners.¹⁷⁸ These countries are South Africa, Zimbabwe, Namibia and Tanzania.¹⁷⁹ Similar legislation is scarcely found internationally, despite traditional healing's known popularity.

Both the AU and SADC have required their member states to enact legislation to regulate their traditional health sectors,¹⁸⁰ as traditional healers are the most important primary health care providers in an African setting.¹⁸¹ South Africa is thus obligated to introduce measures to regulate the sector.¹⁸²

3.4 A South African legislative analysis on traditional health practices

3.4.1 The Constitution of the Republic of South Africa

Prior to the adoption of the Constitution¹⁸³ racially discriminatory laws, policies and practices were rife in the South African legislative framework.¹⁸⁴ The Constitution

¹⁷³ Ibid.

¹⁷⁴ Mbatha note 3 at page 8.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Abrams note 9 at page 3.

¹⁷⁸ Ibid 1.

¹⁷⁹ Ibid 4.

¹⁸⁰ T Boyane 'The Traditional Health Practitioners Act and its Remedies: Reflections after the Operationalisation of the Majority of the Act's Provisions' (2016) 133(1) *SALJ* 28-29.

¹⁸¹ Setswe note 70 above at 56.

¹⁸² Boyane note 180 above at 29.

¹⁸³ The Constitution note 129 above.

¹⁸⁴ Prinsloo note 40 above at 29.

became the supreme source of law in the country when it was enacted, making all laws inconsistent with it and the values it sought to uphold invalid.¹⁸⁵ It recognises the diversity of the people in South Africa and in its Preamble, explicitly mentions that the country belongs to all diverse citizens alike.¹⁸⁶ The diversity includes, inter alia, race, gender, culture, religion or beliefs. Of relevance to this dissertation are those concerning cultural and religious expression in the workplace. Section 23(1) of the Constitution, grants everyone the right to fair labour practices.¹⁸⁷ It has been argued that this includes, tolerance for cultural and religious beliefs in the workplace.¹⁸⁸ This is supported by the Labour Relations Act¹⁸⁹ (LRA) and the Employment Equity Act¹⁹⁰ (EEA) as these Acts protect employees from dismissals based on the arbitrary grounds of culture and religion and also promote the eradication of unfair discrimination on these and other, grounds.¹⁹¹

One of the most important rights in the Constitution which is central to the rights of cultural and religious expression, is the right to human dignity.¹⁹² Even with a wide meaning covering different values, this right is the most basic right in the Constitution, and critical for the enforcement of other rights in the Bill of Rights like those of equality and freedom.¹⁹³ The respect for the principle of human dignity is a unifying agent for a diverse and unequal society, in that it calls for acceptance of all people irrespective of their differences.¹⁹⁴

Culture is described in different ways.¹⁹⁵ Whilst some describe it in terms of literature, music and the different existing artistic activities,¹⁹⁶ the Constitution has been held to encompass customs, race and tradition in its understanding of culture.¹⁹⁷ It further

¹⁸⁵ Section 2 of the Constitution.

¹⁸⁶ Preamble, The Constitution.

¹⁸⁷ Section 23(1) of the Constitution.

¹⁸⁸ Prinsloo note 40 at 31.

¹⁸⁹ Act 66 of 1995.

¹⁹⁰ Act 55 of 1998.

¹⁹¹ Prinsloo note 40 at 30.

¹⁹² S 10 of the Constitution of the Republic of South Africa, 1996.

¹⁹³ S 9 of the Constitution of the Republic of South Africa, 1996.

¹⁹⁴ R Henrico, "The role played by human dignity in religious discrimination disputes" (2014) 35(1) *Obiter* 25.

¹⁹⁵ I Currie and J De Waal *The Bill of Rights Handbook* (2013) 631.

¹⁹⁶ *Ibid* 632.

¹⁹⁷ *Ibid*.

understands culture as a source of identity.¹⁹⁸ Accordingly, different religious and cultural practices are protected as they are central to human identity and hence to human dignity which is in turn central to equality.¹⁹⁹ As an individual's culture is linked to their identity, it also confirms their self-worth and human dignity.²⁰⁰

Section 30 gives all South African citizens the right to use a language of their choice and also the right to participate in the cultural life of their choice.²⁰¹ According to Currie and De Waal, this section also limits the potential abuse of that right,²⁰² which is supported by section 31 of the Constitution, which prohibits any disturbance of persons belonging to a cultural and religious group from enjoying such culture and practising their religion with other members of same communities.²⁰³ This provision is based on a similar article to be found in the International Covenant on Civil and Political Rights (ICCPR), and although its emergence was to protect cultural minorities, it is extended to all people in the country, in all workplaces.²⁰⁴ Similar to article 27 of the ICCPR, section 31 is an individual right which cannot be meaningfully exercised alone.²⁰⁵ One cannot fully enjoy one's culture, speak the language of one's choice or practise one's religion, without associating with others of the same community.²⁰⁶

This means that these rights are not only permissive, but require positive steps taken by authorities to avoid minority rights being subservient to dominant practices and beliefs in that particular setting.²⁰⁷ Accordingly the right under section 31 protects the practice of religion as opposed to the belief itself.²⁰⁸ It is submitted that the right advocates not only for the establishment of institutions for cultural and religious expression in social settings, but also practices that encourage this expression in the workplace.²⁰⁹

¹⁹⁸ Ibid.

¹⁹⁹ Currie and De Waal note 195 above at 631.

²⁰⁰ Prinsloo note 40 above at 28.

²⁰¹ Section 30 of the Constitution.

²⁰² Currie and De waal note 195 above at 626.

²⁰³ Section 31(1)(a) of the Constitution.

²⁰⁴ Currie and De waal note 195 above at 626.

²⁰⁵ Ibid.

²⁰⁶ Ibid 626-627.

²⁰⁷ Ibid 631.

²⁰⁸ Ibid 633.

²⁰⁹ Ibid.

The freedom of conscience, religion, thought, belief and opinion is protected by section 15(1) of the Constitution – often read with other rights that grant an individual the right to association.²¹⁰ As such, members of religious and cultural communities can congregate and practice their beliefs together. Another provision that incorporates the freedom of religion is to be found in section 9(3),²¹¹ which states that no one should be unfairly discriminated against, directly or indirectly on the grounds of religion, conscience, belief and culture.²¹²

The Constitution mandates that religious freedoms, respect and accommodation be treated as both human rights and moral issues.²¹³ The rights to human dignity, freedom of expression and association relate also to religious freedom.²¹⁴ However, these cultural and religious freedoms are limited by a law of general application,²¹⁵ because rights and freedoms are not absolute.²¹⁶ They each have boundaries set by the rights of others and other important societal concerns.²¹⁷ Any limitation or restriction placed on them however must be justifiable.²¹⁸

In its prohibition of any laws that limit any rights entrenched in the Bill of Rights,²¹⁹ tolerance of diverse beliefs is mandated by section 36 of the Constitution as well as the equal treatment of plural cultures and religions within the workplace.²²⁰ With that being said, any restriction placed on an employee's exercise of a constitutionally protected right or freedom such as those relating to cultural and religious practices, must be exercised in a manner that is reasonable and justifiable in a democratic society based on human dignity, equality and freedom.²²¹

3.4.2 Background to the THPA

Upon being elected to power, the African National Congress (ANC) proposed through

²¹⁰ Section 18 of the Constitution.

²¹¹ The Constitution note 129.

²¹² Section 9(3) of the Constitution.

²¹³ N Carrim *Religious diversity in the workplace* (2015) 8.

²¹⁴ *Ibid* 10.

²¹⁵ *Ibid*.

²¹⁶ Summerton note 141 above at 150.

²¹⁷ *Ibid*.

²¹⁸ *Ibid* 151.

²¹⁹ Section 36(2) of the Constitution.

²²⁰ Carrim note 213 above at 10.

²²¹ Section 36(1) of the Constitution.

its National Health Plan for South Africa, a revision of health care provisions²²² in consultation with the WHO and others,²²³ showing a willingness to change the status of traditional healers in the health care system.²²⁴ The relationship between traditional and western health practitioners before this time was one of co-existence.²²⁵ Traditional healers had not been incorporated in the traditional health system despite the government's acceptance of their existence.²²⁶ This status change required legislation. The ANC claimed that by enacting legislation and integrating traditional healers into the national health framework, clients of traditional healers would be granted the right to choose their preferred health care provider in terms of their cultural heritage and belief system.²²⁷ This was described in the 1997 White Paper for the Transformation of the Health System in South Africa.²²⁸

In the absence of conclusive figures, it is estimated that there are currently between 300 000 and 493 000 traditional healers in South Africa.²²⁹ It was therefore no surprise when the Traditional Health Bill was announced in 2003, providing for a regulatory framework to control and manage the registration, training and overall conduct of traditional healers and specific categories of traditional medicine practitioners.²³⁰ This Bill was presented to Parliament and promulgated as the Traditional Health Practitioner's Act of 2004 in September 2004 and came into operation in February of the following year.²³¹

The Traditional Health Practitioners Act²³² met its first hurdle when it was successfully challenged in the case of *Doctors for Life International v Speaker of the National Assembly*.²³³ The basis of the challenge was that during the enactment of this (and

²²² P Bannister 'Regulating "tradition" South African *izangoma* and the Traditional Health Practitioners Act 2004 (2007-2008) 27(1) *The Cambridge Journal of Anthropology* 32.

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ THPA note 131 above.

²²⁶ *Ibid.*

²²⁷ Summerton note 141 at 149-150.

²²⁸ *Ibid.* 149.

²²⁹ S Nmutandani, J Hendricks and M Mulaudzi 'Perceptions and experiences of allopathic health practitioners on collaboration with traditional health practitioners in post-apartheid South Africa' (2016) 8(2) *Afr J Prim Health Care Fam Med* 2.

²³⁰ Traditional Health Practitioners Bill, 2003.

²³¹ Devenish note 51 above at 15.

²³² Act 35 of 2004, note 43 above.

²³³ 2006 (6) SA 416 (CC).

three other Acts) the process followed did not comply with consultation requirements mandated by the Constitution.²³⁴ The Constitutional Court upheld the argument and called for a new legislative process to be embarked on and suspended the operation of the 2004 Act for a period of 18 months.²³⁵

3.4.3 Analysis of the THPA

At the second opportunity, the process was executed to the satisfaction of the Constitutional Court, leading to the enactment of the Traditional Health Practitioners Act 22 of 2007 (THPA). The key provisions within the THPA are discussed below.

The THPA has described its purpose under section 2 as:

- a) Establishing the Interim Traditional Health Practitioners Council of South Africa;
- b) Providing for the registration, training, and practices of traditional health practitioners in the Republic; and
- c) Serving and protecting the interests of members of the public who use the services of traditional health practitioners and against all traditional health practitioners and students who are learning traditional health practice in the Republic.

A detailed analysis of this section follows.

3.4.3.1 Establishment of the Interim Traditional Health Practitioners Council

The THPA makes the Interim Council the driving force behind the implementation of its provisions and contains the requirements for traditional health practitioners to be registered to fulfil the requirements of section 23 of the BCEA, which allows these practitioners to issue lawful sick notes.²³⁶ Section 4 of the THPA provides that the term of office for the Interim Council is three years, but this can be extended for a further two years, in cases where the Minister of Health decides that extension is necessary for the implementation or development of amendments to the THPA.²³⁷ The objects of the Interim Council include the promotion of the quality of the traditional health service and overall public health awareness²³⁸ and to ensure that the practice complies with

²³⁴ The Constitution.

²³⁵ Ibid.

²³⁶ Section 6(1)(e) and (j) of the THPA.

²³⁷ Section 4(3) of the THPA.

²³⁸ Section 5(a) and (b) of the THPA.

universally accepted health care norms and values.²³⁹ It is also the responsibility of the Interim Council to ensure that ethical and professional standards within the practice are maintained and that a professional code of conduct is compiled.²⁴⁰

By means of a Proclamation in the Government Gazette,²⁴¹ internal operating systems within the Interim Council were established and came into effect in April of 2008.²⁴² They included the constitution of the Interim Council,²⁴³ its chairperson and vice-chairperson,²⁴⁴ quorums and meeting procedures,²⁴⁵ (including special meetings).²⁴⁶

3.4.3.2 Providing for the registration, training and practices of traditional health practitioners

When defining a traditional health practitioner, the THPA refers to an individual registered in terms of section 21 of the THPA.²⁴⁷ One of the things that this limited definition illustrates is that it is only the Interim Council which can extend legitimacy to traditional health practitioners.²⁴⁸ This replaces the recognition that would have been given to traditional healers by members of their communities after the training afforded to them by their ancestors and other healers. If not approved by the Interim Council, community recognised healers would not be registered in terms of the THPA for not meeting the definition listed within the text.

The THPA recognises the following four categories of traditional healers: diviners (*izangoma*), herbalists (*izinyanga*), traditional birth attendants and traditional surgeons.²⁴⁹ This excludes other existing and relied upon practitioners such as faith healers (*abathandazi*), consulted by a large portion of South Africans, and with whom other recognized practitioners also work.²⁵⁰ This explicit exclusion being potentially based on the fact that faith healers are sometimes also diviners and vice versa and

²³⁹ Section 5(h) of the THPA.

²⁴⁰ Sections 5(d) and (g) of the THPA.

²⁴¹ Proclamation 17 of Government Gazette 31020.

²⁴² Boyane note 180 above at 30.

²⁴³ Section 7 of the THPA.

²⁴⁴ Section 10 of the THPA.

²⁴⁵ Section 12 of the THPA.

²⁴⁶ Section 10(3) of the THPA.

²⁴⁷ Definition section, THPA.

²⁴⁸ Abrams note 9 above at 4.

²⁴⁹ Section 3 of the Traditional Health Practitioner Regulations of 2015.

²⁵⁰ Zuma note 4 above at 5.

the direct inclusion of both categories of healers would result in a duplication.²⁵¹ The former also use medicinal herbs to effect healing in the same way that diviners do, thus they would be allowed to register on the same conditions as diviners.²⁵²

Section 18²⁵³ provides for the appointment by the Minister of the Health, in consultation with the Interim Council of the Interim Council's registrar. This registrar is both secretary and accounting officer for the Interim Council and may be asked to perform tasks which include the keeping of accurate and updated registers,²⁵⁴ appointment of council staff and the responsibility for the entire registration process for the prospective traditional health practitioners.²⁵⁵ Contrary to the advice of the Regional Committee, only South African citizens are able to register as traditional health practitioners in terms of the THPA.²⁵⁶ This advice prescribes that through the fulfilment of relevant conditions such as the submission of qualifications and conditions set for the registration of other practising citizens, countries should allow for the registration of non-citizens.²⁵⁷ The Regional Committee has found that this leeway helps promote the transfer of indigenous knowledge among African countries.²⁵⁸

Any prospective traditional health practitioner wanting to be registered would have to apply to the registrar with accompanying documents such as qualifications, character references, registration fees and any other information relating to their application.²⁵⁹ It would then be for the registrar to approve the application, in which case they would issue the applicant a registration certificate authorising him or her to practise in the country.²⁶⁰ In the case of the registrar not being satisfied with an application, he or she would be entitled to withhold the registration certificate, referring the matter to the Interim Council for consideration.²⁶¹ The reasons for such refusal possibly being that qualifications on the documents accompanying an application fail to meet the

²⁵¹ Sodi note 1 above at 102.

²⁵² Setswe note 73 above at 6.

²⁵³ Section 18 of the THPA.

²⁵⁴ Section 19(b) and (c) of the THPA.

²⁵⁵ Sections 18-26 of the THPA.

²⁵⁶ Section 21(b) of the THPA.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Section 1(2) of the THPA.

²⁶⁰ Section 21(3) of the THPA.

²⁶¹ Section 21(4) of the THPA.

requirements of the THPA.²⁶²

An application for registration as a traditional health practitioner must be accompanied by the applicant's proof of qualification, as well as his/her highest standard of education,²⁶³ this being the same for both existing and student practitioners.²⁶⁴ Unfortunately the THPA does not offer direction to existing practitioners on what qualifications are necessary for registration or the minimum standard of education necessary for registration. What is offered relates only to the procedure to be followed when the registrar is satisfied or dissatisfied with an application submitted.²⁶⁵

Section 47 of the THPA deals with the decisions which the Minister of Health may make relating to the registration of students by the Interim Council; the minimum standards and duration of educational programmes and training for students, fees payable by applicants for registration, courses to study, as well as the institutions or training which applicants may use for qualification purposes.²⁶⁶

It is with sections 21 and 47 of the THPA in mind that the Traditional Health Practitioner Regulations of 2015 (Regulations) were drafted. The regulations attempt to provide more clarity where the THPA is silent on matters of registration and training.

The registration of students with the Interim Council is discussed in section 4 of the regulations. The requisite application form²⁶⁷ must be completed by students and it must be accompanied by the necessary fees which are determined by the Interim Council from time to time.²⁶⁸ At the time of registration, student practitioners must have at the very least reached and completed studies equivalent to Adult Basic Education and Training²⁶⁹ (ABET) level 1 with proof thereof.²⁷⁰ This level of education is the same

²⁶² Ibid.

²⁶³ Section 21 of the THPA.

²⁶⁴ Section 21(b) of the THPA.

²⁶⁵ Section 21(3-6) of the THPA.

²⁶⁶ Section 47(1)(b) and (c) of the THPA section is lengthy and describes how the Minister of Health is permitted to direct the practices of practitioners.

²⁶⁷ Form THPA2.

²⁶⁸ Section 4(1)(b) of the Traditional Health Practitioner Regulations of 2015.

²⁶⁹ The Department of Education defines ABET as a general conceptual foundation aimed at lifelong learning and development.

²⁷⁰ Section 7(2) of the Traditional Health Practitioner Regulations of 2015.

as grade three in terms of known school equivalents.²⁷¹ ABET is flexible in its approach and curriculum, in that lessons vary according to the audience's specific needs.²⁷² It is submitted that without a standardised and high level of education being made an essential component of the traditional health practitioner registration process, theoretical knowledge is not the basis for qualification and determination of competence.

The THPA describes an accredited institution as one approved by the Interim Council to certify that either a person or body has the required capacity to perform the functions contemplated in the South African Qualifications Authority Act 58 of 1995.²⁷³ These institutions, with traditional tutors,²⁷⁴ must ensure that students register with the Interim Council within 30 days of the student being admitted by them, providing students with a letter to accompany this application.²⁷⁵ The letter must describe the training to be done by the student.²⁷⁶ The failure to register students within the prescribed time frame is an offence in terms of the THPA.²⁷⁷ These directives share the responsibility for registration between students and their relevant trainers.

Although the minimum standard of education is the same for all registering practitioners, the minimum age and duration of educational programmes differs. When registering to be either a diviner or herbalist students must be at least 18 years of age with traditional surgeons and birth attendants having to be 25 years of age or older to qualify for registration.²⁷⁸

The regulations prescribe that all traditional surgeons must complete a training programme of a minimum duration of five years,²⁷⁹ during which students must have observed the processes of circumcision at a minimum of three initiation schools having

²⁷¹ Adult Basic Education and Training, <https://abet.co.za/about-abet/> accessed 1 February 2022.

²⁷² Ibid.

²⁷³ Definition section, Traditional Health Practitioner Regulations of 2015.

²⁷⁴ A traditional tutor is defined under the THPA as a person registered under any of the prescribed categories of traditional health practice who has been accredited by the Interim Council to teach traditional health practice or any aspect thereof.

²⁷⁵ Section 4(1)(d) and (c) of the Traditional Health Practitioner Regulations of 2015.

²⁷⁶ Section 5 of the Traditional Health Practitioner Regulations of 2015 (regulations).

²⁷⁷ Section 4(1)(e) of the regulations.

²⁷⁸ Section 7(1) of the regulations.

²⁷⁹ Section 6(4) of the regulations.

done supervised practice for two years.²⁸⁰ The other three groups of student practitioners have only to complete training for 12 months.²⁸¹

Some specific topics of study for diviners and herbalists include traditional consultations, diagnosis, and identification of herbs and how to dispense such herbs.²⁸² The training for traditional birth attendants includes issues of conception, pregnancy and post-natal care.²⁸³ Logbooks signed by trainers as well as certificates reflecting the completion of training must be submitted to the registrar or Interim Council in order for student particulars to be recorded.²⁸⁴ It is noteworthy that besides the vague topics covered in programmes, there is no mention of specific content to be taught in any of the categories. There is also no mention in the regulations of how such knowledge is tested or examined, but it is assumed that tutors and training institutions will decide in the absence of standardisation and assessment apparent in teachings from the ancestors of different practitioners.²⁸⁵ Despite the regulations, no traditional health practitioners have been registered by the Interim Council.²⁸⁶ It cannot be known whether this is due to a rejection by traditional healers as no announcement to this effect or records of such registrations can be found.

3.4.3.3 Serving and protecting the interests of those who use the services of traditional health practitioners

One of the key objects of the Interim Council is to protect and serve the interests of the public who use or are affected by the services of traditional health practitioners.²⁸⁷ To this end, the registrar is empowered to remove a traditional health practitioner's name from the register when necessary.²⁸⁸ Section 23(1)(g)²⁸⁹ states that the registrar on the instruction of the Interim Council may also remove a traditional health practitioner's name from the register if it is proven that the practitioner has been found guilty of improper or disgraceful conduct. This would be dealt with in terms of the

²⁸⁰ Ibid.

²⁸¹ Section 6(1-3) of the regulations.

²⁸² Section 6(1-2) of the regulations.

²⁸³ Section 6(3) of the regulations.

²⁸⁴ Section 9 of the regulations.

²⁸⁵ Peltzer, K. 'Traditional health practitioners in South Africa' (2009) *Afr J Trad CAM* 956.

²⁸⁶ Abrams note 9 above at 8.

²⁸⁷ Section 5(C) of the THPA.

²⁸⁸ Section 23(4) of the THPA.

²⁸⁹ THPA 22 of 2007.

council's disciplinary measures listed under chapter four²⁹⁰ of the Act. The provisions therein describe how complaints against practitioners are laid, investigations instituted, and inquiries undertaken. These disciplinary measures and guidelines seek to offer regulation and promote a spirit of accountability within the profession. They also serve to protect the interests of members of the public who use the services of traditional health practitioners (as per section 2 of the THPA).²⁹¹ This could be done in a more objective manner with the existence of a code of conduct as is mandated by section 5(g) of the THPA, where the compilation and maintenance of a code of conduct is listed as an object of the Interim Council, assisting in ensuring objective investigations and complaints. During investigations, the Interim Council may appoint investigating officers empowered to search premises other than those of a private dwelling if it is reasonably believed that the situation qualified for a search warrant to be issued and that the delay involved in obtaining a search warrant would defeat the purpose of the search.²⁹²

What is missing from both the THPA and its accompanying regulations, are provisions for sick notes which registered traditional health practitioners are able to lawfully issue.²⁹³ As stated earlier, registration with the Interim Council validates sick notes issued by traditional health practitioners as per section 23 of the BCEA, but the absence of regulatory stipulations makes the reliability of these sick notes a legitimate concern for employers.²⁹⁴ The following section of this chapter discusses the legislative framework for sick leave and sick notes in South Africa.

3.5 Section 23(2) of the Basic Conditions of Employment Act

The BCEA was enacted to give effect to the right to fair labour practices as envisioned in section 23(1) of the Constitution.²⁹⁵ The BCEA applies to all employees and employers in the country, except those who are members of the National Intelligence Agency, the South African Secret Service and South African National Academy of Intelligence as well as unpaid volunteers working for charity organisations amongst

²⁹⁰ Ibid.

²⁹¹ Section 2(c) of the THPA.

²⁹² Section 32(1) of the THPA.

²⁹³ J van Niekerk 'Medical certificates under the THPA: The issue of validity and reliability' 2019 22(1) *Potchefstroom Electronic Law Journal* 1.

²⁹⁴ Ibid.

²⁹⁵ Section 2 of the BCEA.

others.²⁹⁶ Employees who fall sick are entitled to sick leave as regulated by section 22 of the BCEA, and submission of a sick note constitutes official authentication of absence due to illness. These sick notes are also necessary for the payment of sick leave as per section 22 of the BCEA.

Section 22 explains that employees are entitled to paid sick leave equivalent to the days which they would have worked for a period of six weeks.²⁹⁷ This entitlement is reduced in cases where employees have worked with the employer for a period of six months or less.²⁹⁸ The BCEA states that in such a case, the employees will only be entitled to one day's paid sick leave for every 26 days that they had worked.²⁹⁹

Section 23³⁰⁰ of the BCEA then details the proof required for employees to show that they were incapacitated due to an illness and thus eligible for sick leave as per section 22. This proof, if not submitted or found not to meet the stipulated requirements, would result in an employee not being paid and/ or being disciplined for unauthorised absenteeism.

Section 23³⁰¹ provides that sick notes are to be submitted by employees who are absent from work for more than one day in a week or are absent twice during an eight-week period. The BCEA also states that employees are mandated to submit sick notes when requested to do so by their employer.³⁰² Section 23 of the BCEA is relevant to this dissertation as it sets out the requirements for a valid medical certificate, including the person who can issue a valid medical certificate for purposes of paid sick leave. It states:

'(2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.'

²⁹⁶ Section 3(a) & (b) of the BCEA.

²⁹⁷ Section 22(2) of the BCEA.

²⁹⁸ Section 22(3) of the BCEA.

²⁹⁹ Ibid.

³⁰⁰ BCEA 75 of 1997.

³⁰¹ Ibid.

³⁰² Section 23(1) of the BCEA.

Practitioners with the right to diagnose, treat and certify patients must be registered with a professional council established by an Act of Parliament. This not only refers to medical practitioners who have been registered under the Health Professions Act ('HPA'), but also those belonging to the allied health professions and traditional health practitioners. This provision also seeks to emphasise the need for validity and reliability of submitted sick notes upon which employers can rely, supported by the monitoring and regulatory measures of professional councils, including their established professional codes of conduct.³⁰³

The next section of this paper discusses the ability of medical practitioners registered under the Health Professions Act³⁰⁴ and allied health professionals registered under the Allied Professions Act (Allied Act) to submit valid medical certificates in terms of the Acts that regulate them.³⁰⁵ The reason behind this inclusion is to show the necessary age, training, qualifications and regulating codes of conduct for these groups. In detailing this information, it will be shown that the standard set for traditional health practitioners is significantly lower than that of medical or allied health professionals.

3.6 The Health Professions and Allied Health Professions Acts

Practitioners registered under the HPA³⁰⁶ were considered as the only legal signatories of sick notes. This can be attributed to the wording of section 23(2) of the BCEA. The practitioners registered under this Act include medical practitioners such as general practitioners, dentists, as well as psychologists.³⁰⁷ The HPA itself has at its heart, the function of educating, training, and registration of the newly graduated medical students, providing guidance also on other matters related to the conducting of their duties as medical practitioners.

Another group of practitioners whose sick notes are accepted as legal and valid for the purposes of section 23(2)³⁰⁸ are those registered under the Allied Health

³⁰³ THPA Regulations of 2015 note 272 above.

³⁰⁴ Act 56 of 1974.

³⁰⁵ Act 63 of 1982.

³⁰⁶ Act 56 of 1974.

³⁰⁷ W Albertyn, W 'Medical certificates from Traditional Healers' available at labourman.co.za/medical-certificates-from-traditional-healers. Accessed 9 October 2021.

³⁰⁸ BCEA.

Professions Act (Allied Act).³⁰⁹ The allied health profession has been defined in the Allied Act³¹⁰ as the practice of professions such as Chinese medicine and acupuncture, chiropractic treatment and homeopathy to name but a few listed under section 16(1) of same Act. These allied practitioners would need to be registered through the Allied Act and the Allied Health Professions Council of South Africa (Allied Council).³¹¹

The education, training and registration of medical practitioners is discussed in chapter 2 of the HPA.³¹² In line with the THPA, the Health Professions Council of South Africa (HPCSA), establishes control over training by stating that it is only universities or technikons that may provide qualifying training for any professions under section 16 of the HPA.³¹³

Similar to both the THPA and HPA,³¹⁴ the establishment of the Allied Council was one of the main purposes of the Allied Act.³¹⁵ This Allied Council has as one of its main objectives the governance, administration and control of the practice of the professions registered with them.³¹⁶ The Allied Council facilitates the registration of practitioners and has set out the registration procedure for such practitioners in section 15 of the Allied Act.³¹⁷ According to this provision, those wanting to register would submit application forms, qualifications, as well as proof of these qualifications' authenticity and validity and registration fees to the registrar of the Allied Council.³¹⁸ Applicants must also submit documents providing proof of identity, citizenship and good character.³¹⁹ Registering practitioners would also need to submit current level one First Aid certificates.³²⁰

³⁰⁹ Act 63 of 1982.

³¹⁰ Ibid.

³¹¹ Section 3 of the Allied Health Professions Act 63 of 1982.

³¹² Act 56 of 1974.

³¹³ Section 16(1) of the HPA.

³¹⁴ Section 2(b) of the THPA.

³¹⁵ Act 63 of 1982.

³¹⁶ Sections 3(aA)-(b) of the Allied Health Professions Act 63 of 1982.

³¹⁷ Act 63 of 1982.

³¹⁸ Section 15 of the Allied Health Professions Act 63 of 1982.

³¹⁹ Ibid.

³²⁰ Allied Health Professions Council website available at <https://ahpcsa.co.za/registration-requirements/> accessed 21 November 2021.

In order to register as a medical practitioner with the HPCSA, the candidate must be in possession of a six-year Bachelor of Medicine or Bachelor of Surgery degree from recognised institutions,³²¹ followed by an internship and community service.³²² The Allied Council at section 16A of the Allied Act also establishes control over all matters concerning training. The qualifications necessary for the registration for those in diagnostic allied health professions such as in chiropractors and homeopaths, is a five-year master's degree.³²³ Those who seek to register as professionals in Chinese medicine, acupuncture and naturopathy need to obtain three-year basic medical sciences degrees with a two-year specialisation in one of the mentioned fields.³²⁴

As mentioned previously, the minimum level of education for traditional health practitioners is an ABET level 1 that can be attained by a pupil in grade three.³²⁵ This level of study is far less than that for medical and allied professionals. It is suggested that the low level of education required for the registration of traditional health practitioners is a result of the challenge that is faced in establishing a clear and uniform standard for the practitioners.³²⁶ As the nature of traditional healing is based on cultural belief systems, academic standards hold less weight than in conventional medical fields.³²⁷ This is further evidenced by the different training programmes institutions can offer for traditional health practitioners as opposed to medical and Allied practitioners. Both medical and allied practitioners' study at universities and technikons,³²⁸ while the training programme of traditional health practitioners can be successfully conducted by an individual. According to the THPA, individuals meet the definition of an accredited institution.³²⁹ While the HPCSA and Allied Council have been able to exert strict control over the study content, training and examinations for their practitioners, no specific course content for traditional health practitioners has been created and

³²¹ Section 3(1) and Annexure A of the Health Professions Act 56 of 1974, Regulations relating to the registration.

³²² Section 3(2)(b) and (c) of the Health Professions Act 56 of 1974, Regulations relating to the registration.

³²³ Allied Health Professions Council, <https://ahpcs.co.za/registration-requirements/> Accessed 21 November 2021.

³²⁴ Ibid.

³²⁵ THPA Regulations note 273 above.

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ See notes 312 and 319.

³²⁹ THPA note 273 above, definition section.

implemented.³³⁰

It has been found however that although formal education is an important component of assessing one's suitability for a role, it should not be the only criterion used to assess this suitability.³³¹ This is in line with the paradigm of affirmative action.³³² In South Africa, affirmative action is used as a transformational project with overall goals of reconstructing political and economic aspects of society.³³³ Tsotesti writes that in occupations that do not rely on an education system alternative means should be found to determine a person's skills from their exposure to informal education.³³⁴ By doing this, problems of historically disadvantaged groups could be redressed and there would be meaningful transformation in society and the education system.³³⁵ It is submitted that traditional healing is one such occupation which is based on an informal education system in that it is spontaneous, unsystematic and unorganised.³³⁶ Its students are equipped with the desired knowledge, skills and attitudes, irrespective of age or a designed plan to educate them.³³⁷

Besides registration of the practitioner being a prerequisite for a legally accepted sick note, there are other requirements that validate sick notes issued by medical practitioners, including patient details and the period of the sick leave, the practitioner's qualification, date when the patient was examined as well as a description of the illness if this was consented to by the patient.³³⁸ While it falls outside of the scope of this study, it is recommended that sick notes state that they have been written in the professional opinion of the practitioner as opposed to what they may have been told by the patient. The aim of this inclusion would be for sick notes to be held as more credible documents by employers.

Section M of the Code of Ethics for Allied Professions similarly describes the granting

³³⁰ THPA Regulations note 273 above.

³³¹ S Tsotetsi Affirmative action as a mechanism for education reform in South Africa (Master's thesis University for Christian Higher Education of Potchefstroom 2002) 150.

³³² Ibid.

³³³ P Andrews 'Affirmative action in South africa: Transformtion or Tokenism' 1999 *New York Law School Articles and Chapters* 82.

³³⁴ Tsotesti note 331 above at 150.

³³⁵ Ibid 151.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Section 16(1) of the Ethical Guidelines for Health Care Professions.

of sick notes by allied practitioners. Only a few of the practitioners registered under this Act can grant such notes. Practitioners of osteopathy, Ayurveda, Chinese medicine, acupuncture, naturopathy, chiropractic treatment, homeopathy for example can legally grant medical certificates,³³⁹ but only with the name and address of the relevant practitioner or partnership, the professional designation, council registration number and practice number, patient and examination details, duration of recommended sick leave and whether the employee was totally indisposed during that time or not.³⁴⁰

For those registered with the HPCSA, their core professional ethical values are listed and highlighted in the General Ethical Guidelines for the Health Care Professions booklet. Amongst these are the values of truthfulness, integrity, compassion, tolerance and community spirit.³⁴¹ The requirement of community spirit directs practitioners towards the betterment of society in accordance with their abilities and standing in the community.³⁴² The Code of Ethics for Allied Professions contains principles of medical ethics similar to those for medical practitioners.³⁴³

These codes of conduct are used as primary documents when investigating allegations of unprofessional conduct against practitioners.³⁴⁴ The Interim Council has yet to draft an ethical or professional code of conduct with which to regulate the conduct of its practitioners. This is concerning as such a code would assist the Interim Council in meeting section 2(c) of the THPA.³⁴⁵ The codes of conduct for medical and allied professionals are key to providing guidelines for the conduct that their practitioners must follow and gives clear information on the issuing of sick notes in terms of section 23 of the BCEA. Without this, employers are unable to test the validity of traditional health practitioner sick notes even though they are legal in terms of section 23 of the BCEA.³⁴⁶ It must be emphasised that all sick notes are considered hearsay evidence in that they are documents written by another person presented to

³³⁹ Section M of the Code of Ethics, Allied Health Professions Act.

³⁴⁰ Ibid.

³⁴¹ Section 2 of the General Ethical Guidelines for Health Care Professions booklet 1.

³⁴² Ibid.

³⁴³ Section (B)-(I) of the Code of Ethics, Allied Health Professions Act.

³⁴⁴ THPA Regulations note 272 above.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

attest to the truth presented by a person.³⁴⁷ In matters where the validity of these notes is in question, employers and employees alike are able to call in the issuing practitioner to answer questions in this regard.³⁴⁸

3.7 Chapter conclusion

Empowered by the THPA, traditional health practitioners who diagnose and treat patients are also able to issue sick notes,³⁴⁹ but the vague qualifications held by traditional health practitioners, the lack of standardisation amongst those practising in the field with the necessary training requirements are the grey areas which are cause for concern and doubt.³⁵⁰ The Traditional Health Practitioner Regulations were published to provide more clarity in matters relating to the eligibility and training of traditional health practitioners, but have also failed in this regard.

As traditional healers can be called and trained by their ancestors through dreams, signs and symbols, with their method of healing being supported by supernatural and spiritual forces that are at times orally transmitted, there is a vast difference between these practitioners and those who practise Western medicine.³⁵¹ Significantly, the THPA does not mention spirituality or the presence of ancestors which are the main components of traditional healing.

This chapter has placed at its focus the empowering legislation by which traditional health practitioners are regulated in the country. The THPA's key provisions were emphasised to provide more insight into the engine which drives this piece of legislation. These provisions relate to the establishment and objectives of the Interim Council. A glimpse of the emergence of the THPA was given by touching on support received internationally and regionally.

This second half of this chapter discussed legislation relating the lawful issuance of sick leave certificates and the health practitioners who are empowered by way of legislation, to dispense such medical certificates. The necessary qualifications for

³⁴⁷ Section 3(1) of the Evidence Amendment Act 45 of 1988.

³⁴⁸ Section 3(1)(b) of the Evidence Amendment Act 45 of 1988.

³⁴⁹ Section 23(2) of the BCEA.

³⁵⁰ Moshabela, Zuma and Gamede note 8 above at page 85.

³⁵¹ Ibid at 84.

registration with the relevant councils and ethical considerations were discussed for medical and allied practitioners.

CHAPTER FOUR

THE TRADITIONAL HEALER SICK NOTE IN THE WORKPLACE

4.1 Introduction

This dissertation addresses the status and impact of sick notes in the South African workplace. As has been discussed in previous chapters, sick notes issued by traditional health practitioners are legally valid in terms of section 23(2) of the BCEA. This is because the Interim Council is a professional body established by an Act of Parliament³⁵² authorised to register traditional health practitioners.³⁵³ This means that employers can now lawfully accept sick notes from employees who have consulted registered traditional health practitioners.³⁵⁴ It remains the right of employers to interrogate sick notes if they suspect a lack of legitimacy during arbitration proceedings.³⁵⁵ The THPA also offers channels to report any misconduct by a registered traditional health practitioner.³⁵⁶

It is the practicality of this regulation in the context of the nature of traditional healing and the empowering act that is examined in this chapter and how it has impacted the workplace and the business requirements of employers. This is followed by a discussion on the reasonable accommodation to be undertaken by employers when dealing with the personal beliefs of their employees. Lastly, case law showing how the principle of reasonable accommodation has been applied in matters regarding traditional healer sick notes is discussed.

4.2 The importance of a sick note on an employer's business requirements

A business's performance is critical to ensure that it remains competitive. Employee attendance is an important aspect in achieving organisational goals and ensuring that businesses remain competitive.³⁵⁷ It is estimated that the South African economy loses

³⁵² Traditional Health Practitioners Act 22 of 2007 (THPA).

³⁵³ Section 2(b) of the THPA.

³⁵⁴ Tshela note 22 above at 280.

³⁵⁵ Section 3(1)(b) of the Evidence Amendment Act 45 of 1988.

³⁵⁶ Section 30 of the THPA.

³⁵⁷ T Singh, N Chetty and A Karodia 'An investigation into the impact of absenteeism on the organisational performance of a private security company in Durban, KwaZulu-Natal' (2016) 4(11) *Singaporean Journal of Business Economics and Management Studies* 105.

between R12-16 billion a year due to employee absenteeism,³⁵⁸ making a significant impact on a business's bottom line if not controlled.³⁵⁹

The power to manage a workforce is referred to as managerial prerogative and is held by employers,³⁶⁰ encompassing the right of employers to manage industrial capital and the power to command labour as per employment contracts concluded between themselves and employees.³⁶¹ These contracts, stipulate working hours and shifts of employees. This information is dictated by the business's operational requirements and is subject to change if the requirements of an employer change. The working hours are part of the obligations owed by employees to employers.³⁶² Deviation from their scheduled working hours has a direct impact on an employer's production goals.

The suddenness of when an employee's sickness occurs affects the business requirements of employers.³⁶³ When an employee is absent from work, the employer is often faced with challenges that range from reorganising the workforce, an increase in labour costs through payment of overtime, delay in production and meeting customer expectations.³⁶⁴ This is worsened if the absence is for a long period or recurs. Such challenges may be mitigated if absence is planned for as is the case with planned annual, maternity and paternity leave,³⁶⁵ allowing employers to make contingency plans.³⁶⁶

Personal illness is one of the most common reasons for an employee's absence from the workplace.³⁶⁷ The prospect of even the best employees falling sick has been

³⁵⁸ L Gutsa *Factors affecting absenteeism at ArcelorMittal South Africa* (Master's thesis University of Johannesburg 2018) 14.

³⁵⁹ M Kocakulah, A Kelley, K Mitchell and M Ruggieri, 'Absenteeism problems and costs: causes, effects and cures' (2016) 15(3) *International Business & Economics Research Journal* 91.

³⁶⁰ J Kanamuguire 'The concept of managerial prerogative in South African labour law' (2014) 5(20) *Mediterranean Journal of Social Sciences* 424.

³⁶¹ Ibid.

³⁶² M Phooko and F Mnyongani, 'When ancestors call an employee: *Kievits Kroon Country Estate (Pty) Ltd v Johanna Mmoledi and others*' 2015 *SA Merc LJ* 163 606.

³⁶³ Ibid.

³⁶⁴ *Bagshaw Footwear v CCMA* (2016) ZALCPE 3 para 15.

³⁶⁵ Phooko and Myongani note 362 above.

³⁶⁶ R Badubi. 'A critical risk analysis of absenteeism in the work place' (2017) 2(6) *Journal of International Business Research and Marketing* 32.

³⁶⁷ Singh note 357 above at 110.

addressed in legislative frameworks such as the LRA³⁶⁸ and the BCEA,³⁶⁹ supplemented by company specific policies and procedures, sectoral determinations and collective agreements. While the legislative frameworks provide guidelines that ensure fair labour relations for employees, policies aim to provide clarity for the workforce and lessen operational disturbances.³⁷⁰

As previously discussed, section 22 of the BCEA makes provision for the absence of employees due to illness.³⁷¹ This entitlement is a right which allows employees an opportunity to seek medical help and recover from illness without suffering any loss of income.³⁷² In practice some employees have abused sick leave entitlements by falsely claiming to be sick.³⁷³

Company policies also help to communicate expectations and attempt to curb any unnecessary taking of sick leave by employees by adding complexity to the granting of payments for this type of leave.³⁷⁴ Other employers have gone to the lengths of mandating that employees not leave their homes during their sick leave and have members of their human resources department, paying visits to the homes of the sick employees to confirm the genuineness of their illness.³⁷⁵ Sick leave is thought to be more prevalent in companies that do not ask for proof of illness.³⁷⁶ This was similarly found in companies with permissive organisational cultures, where high levels of flexibility were abused by employees.³⁷⁷ This is why the absence of supervision and control over sick leave allows employees to take advantage and absent themselves from work without just cause.³⁷⁸ The sick note therefore becomes a vital tool for businesses in the meeting of their business requirements.

4.3 The impact of the traditional health practitioner's sick note

³⁶⁸ Act 66 of 1995.

³⁶⁹ Abrams note 9 above.

³⁷⁰ Kanamuguire note 360 above at 431.

³⁷¹ Section 22 of the BCEA.

³⁷² Singh note 357 above at 110.

³⁷³ Ibid 111.

³⁷⁴ Ibid.

³⁷⁵ N Dhlewayo, P Bello and J Mofokeng, "Missing in action: Perspectives on employee absenteeism in the South African Police Service" available at <https://doi.org/10.1080/23311886.2021.19642002>.

³⁷⁶ Singh note 357 at 111.

³⁷⁷ Badubi note 366 above.

³⁷⁸ Ibid 34.

As the workplace is a microcosm of South Africa's multicultural society, there are often clashes that take place between employees and their employers due to matters emerging from different cultural beliefs and practices.³⁷⁹ One such cultural clash takes place over how sickness is perceived by the different cultural groups.³⁸⁰ The concept of sickness in cultures which support African traditional healing is linked to traditional African religion or spirituality, demonstrated by the many traditional healers who also hold positions as religious leaders.³⁸¹ With this, employees who believe that their recent bout of sickness cannot be adequately attended to by a medical practitioner, can elect to consult a traditional health practitioner for healing. It is in any event an employee's right to consult health practitioners of their choice.³⁸² If a sick note is issued by the traditional health practitioner, the employee is entitled to be paid for the duration of his or her absence as per section 23(2) of the BCEA.³⁸³ In accepting these sick notes, employers are acknowledging and tolerating the cultural and religious beliefs of their employees.³⁸⁴

The preceding discussion has detailed the nature of the practice of traditional healers and has analysed the BCEA and THPA and its accompanying regulations. Both laws have been found lacking in the face of the enormity of the traditional healing practice.³⁸⁵ Legislation has paid very little attention to the practice itself and has thus contributed to confusion and challenges in the workplace.³⁸⁶

It has been found that there is a lack of information regarding registration for existing practitioners and their training requirements. Additionally, the absence of accredited training institutions for traditional health practitioners directly impacts the quality of traditional health practitioners who issue sick notes.³⁸⁷ In the absence of these institutions, there is no specific curriculum and knowledge that could offer a base line upon which registrations could be based.³⁸⁸ The concern here for employers is that a

³⁷⁹ Phooko and Myongani note 362 above.

³⁸⁰ Ibid.

³⁸¹ Setswe note 70 at page 2.

³⁸² Tshela note 22 above at page 280.

³⁸³ THPA Regulations note 292 above.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

³⁸⁶ Tshela note 22 above at page 280.

³⁸⁷ Ibid.

³⁸⁸ Peltzer note 285 above at page 956.

subjective licensing system is used by the Interim Council to approve the training undertaken by applicants. This non-objective process is supported by the personal testimonies of other traditional health practitioners, to motivate for the registration of applicants.³⁸⁹ This process is unique and lacks clarity, accuracy and objectivity.³⁹⁰ This extends support for a western approach by employers however it cannot be ignored that there is a genuine concern to many employers. There is a higher possibility of inaccurate diagnosis and treatment advice for employees if non-objective processes are.³⁹¹ Accordingly, employees would also be able to fake symptoms of an illness to an unqualified traditional health practitioner to be issued with a sick note exempting him/ her from work for an indefinite period. This would directly impact the business needs of an employer and affect business output as earlier described.³⁹²

There is a separate lower standard for traditional healer sick notes.³⁹³ Unlike both the HPCSA and the Allied Councils, the Interim Council has failed to conclude an ethical code of conduct for its practitioners, which is one of its objectives.³⁹⁴ These codes aim to control the behaviour of those registered with the relevant councils, also offering South African employers' recourse where unethical and unprofessional conduct by these practitioners takes place.

The information in the codes of conduct has also been used by courts to examine the reliability, authenticity and credibility of western medical certificates.³⁹⁵ In the case of *Old Mutual Life Assurance Co SA Ltd v Gumbi*³⁹⁶ the court dealt with the credibility of a sick note. The Supreme Court of Appeal (SCA) rejected a sick note after having examined it and the context in which it had been issued. The surrounding facts involved the employee submitting a travel expense claim to his supervisor which contained a discrepancy relating to the distance he had travelled.³⁹⁷ When asked to explain this to his supervisor, the employee became aggressive and threatened to assault his supervisor for which he was charged with misconduct and called to a

³⁸⁹ THPA Regulations note 273 above.

³⁹⁰ Ibid.

³⁹¹ *Kievits* note 33 above.

³⁹² *Bagshaw Footwear v CCMA* (2016) ZALCPE 3 paragraph 15.

³⁹³ *Kievits* note 33 above at page 489.

³⁹⁴ Allied Act 304 above.

³⁹⁵ *Kievits* note 33 above at page 488.

³⁹⁶ [2007] 4 All SA 866 (SCA).

³⁹⁷ [2007] 4 All SA 866 (SCA) paragraph 10.

disciplinary hearing. The employee submitted a sick note shortly before the commencement of this hearing and accordingly failed to attend. The hearing continued in his absence, and he was dismissed.³⁹⁸ The employee appealed against this decision and the employer reinstated him with the intention of recharging him for his misconduct.³⁹⁹ At the second hearing, an adjournment was requested by the employee, and he failed to return thereafter.⁴⁰⁰ A second sick note was submitted by the employee stating that he was suffering from a tension headache and enteritis.⁴⁰¹ The hearing continued in the employee's absence, and he again was dismissed by the presiding chairperson who felt that the employee was malingering.⁴⁰² The SCA too found that the dismissal of the employee was justified as the sick notes were found to be tools used by the employee to evade facing his disciplinary hearing.⁴⁰³ This decision was primarily based on the employee's conduct during the matter and tainted his submission of sick notes.⁴⁰⁴

The absence of a code of conduct providing the information to be presented on a valid sick note issued by a traditional health practitioner negatively impacts on the ability of an employer to assess the credibility of a sick note.⁴⁰⁵ The fact that no criteria have been set for traditional health practitioner sick notes to be distinguished as genuine or fake, limits the actions an employer can take to address sick notes they believe to be fraudulent.⁴⁰⁶ The only requirements for a valid traditional health practitioner's sick note are found in section 23(2) of the BCEA.⁴⁰⁷ The gaps in information create legal uncertainty for employers receiving sick notes from traditional health practitioners⁴⁰⁸ and provide an opportunity for abuse by employees as any sick note submitted by them must be accepted by employers,⁴⁰⁹ the only basis for contention being proof or not of registration with the Interim Council.

³⁹⁸ [2007] 4 All SA 866 (SCA) paragraph 11.

³⁹⁹ *Ibid.*

⁴⁰⁰ [2007] 4 All SA 866 (SCA) paragraph 14.

⁴⁰¹ *Ibid.*

⁴⁰² [2007] 4 All SA 866 (SCA) paragraph 16 and 18.

⁴⁰³ [2007] 4 All SA 866 (SCA) paragraph 18.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ THPA Regulations note 273 above.

⁴⁰⁶ *Kievits* note 33 above at page 489.

⁴⁰⁷ *Rycroft* note 36 above at page 2.

⁴⁰⁸ THPA Regulations note 272 above.

⁴⁰⁹ *Kievits* note 33 above at page 489.

Employers, therefore, find it easier to accept sick notes issued by conventional practitioners (medical and allied practitioners) as their practice has been regulated for a long time and is subject to strict monitoring and regulatory measures.⁴¹⁰ They are also better suited to regulation, making it easier for employers to rely on their sick notes when assessing the illnesses of their employees.⁴¹¹ Failure to address these areas of concern will increase the opportunity for abuse and, in the process, damage the credibility of the traditional healing practice in the workplace.⁴¹²

4.4 Sectoral Determinations 1, 7, 12 and 13

Even in the absence of confirmation of registration from the Interim Council, employers still accept sick notes issued by traditional healers.⁴¹³ Evidence of this is found in the sectoral Determinations regulating 'contract cleaning'⁴¹⁴ (contract cleaning Determination'), for domestic workers⁴¹⁵ (domestic worker Determination'), forestry⁴¹⁶ (forestry Determination") and agricultural (agricultural Determination') sectors.⁴¹⁷ Sectoral Determinations are provided for by the BCEA, whereby the Minister of Labour is permitted to provide for conditions of employment within a specific sector.⁴¹⁸ There are currently 11 sectoral Determinations, which govern vulnerable employees and regulate their employment conditions.⁴¹⁹ In 2001 and 2007, employees regulated by these sectoral Determinations formed a third of the workforce in South Africa,⁴²⁰ making their provisions relevant in discussion regarding the South African workplace. Section 25 of the forestry Determination regulates sick leave, borrowing from section 23(2) of the BCEA. The Determination states that failure to produce a sick note would result in non-payment of the relevant employee⁴²¹ in cases where employees are absent for more than one day in a week or twice during an eight-week period.⁴²²

⁴¹⁰ Ibid 488.

⁴¹¹ THPA Regulations note 273 above.

⁴¹² Tshela note 22 above at page 280.

⁴¹³ THPA Regulations note 273 above.

⁴¹⁴ Sectoral Determinations 1: Contract Cleaning Sector, South Africa.

⁴¹⁵ Sectoral Determinations 7: Domestic Worker Sector, South Africa.

⁴¹⁶ Sectoral Determinations 12: Forestry Sector, South Africa.

⁴¹⁷ Sectoral Determinations 13: Farm Worker Sector, South Africa.

⁴¹⁸ Ritcher, E. "Annual leave and shut-down periods" (2016) 16047 *Farmer's Weekly* 25.

⁴¹⁹ The Fair Labour Practice available at <http://www.fairlabour.co.za/news/2016/09/20/sectoral-Determinations/> accessed 15 December 2021.

⁴²⁰ Development Policy Research Unit, University of Cape Town "Addressing the plight of vulnerable workers: The role of Sectoral Determinations 5.

⁴²¹ Section 25(6) of the Sectoral Determination 12: Forestry Sector, South Africa.

⁴²² Ibid.

Traditional healers are directly mentioned as persons entitled to issue sick notes.⁴²³ This is similarly mentioned in section 22(7)(c) of the agricultural Determination which applies to all farm workers and domestic workers, who are employed in connection with farming activities in farmhouses.⁴²⁴

Section 19(2)(b) of the contract cleaning Determination⁴²⁵ states that as a condition of payment for an absence due to sickness for a period of three or more consecutive days, an employee may submit a sick note from a traditional healer stating the nature and duration of the employee's incapacity. The domestic worker Determination makes provision for this under section 20(7)(a).⁴²⁶

The use of the words 'traditional healers' as opposed to 'traditional health practitioners' signifies a prima facie acceptance of all traditional healer sick notes,⁴²⁷ based on the definition of a traditional health practitioner in the THPA.⁴²⁸ As with sick notes issued by employees who have visited other health practitioners, employers can now reject these notes if they found them to be issued fraudulently.

This would obviate the need for criteria to be applied by employers approving these notes.⁴²⁹ Neither would there be an obligation on employees to seek traditional healers registered with a professional body that had met the training requirements.⁴³⁰ The traditional healers themselves would not be subject to the oversight of a professional body in respect of fraudulent sick notes issued or any other unprofessional behaviour.⁴³¹ However, employers would have recourse in terms of section 30 of the THPA to report any unprofessional conduct by a registered traditional health practitioner and the Interim Council able to impose any punishment on them which could include reprimanding them, a fine or suspension from practising his or her profession for a period of time.⁴³²

⁴²³ Section 25(7)(c) of the Sectoral Determination 12: Forestry Sector, South Africa.

⁴²⁴ Section 1 of the Sectoral Determinations 13: Farm Worker Sector, South Africa.

⁴²⁵ Sectoral Determination 1: Contract Cleaning Sector, South Africa.

⁴²⁶ Sectoral Determination 7: Domestic Worker Sector, South Africa.

⁴²⁷ Rycroft note 36 above at page 111.

⁴²⁸ Definition section, THPA.

⁴²⁹ Rycroft note 36 above at page 111.

⁴³⁰ *Kievits* note 33 above at page 489.

⁴³¹ *Ibid.*

⁴³² Section 34 of the THPA.

It is submitted that sections 25(6) of the forestry Determination, 22(7)(c) of the agricultural Determinations, 19(2)(b) of the contract cleaning Determination and 20(7)(a) of the domestic worker Determination are welcomed steps by legislators where potential discrimination had previously been identified in working conditions that did not accommodate cultural and religious differences.⁴³³ With three of these Determinations being passed prior to the THPA's enactment in 2007, the absence of such provisions cannot be said to be an oversight on the part of legislators.

It cannot be known with certainty whether it was the intention of the legislators to allow employees within the aforementioned sectors to submit sick notes from any traditional healers even if they did not meet the requirements listed in section 23(2) of the BCEA, as it does lessen the authority of employers to scrutinise sick notes. This also would be a contradiction to the BCEA which makes the acceptance of sick notes dependent on the registration of practitioners.⁴³⁴ In the absence of evidence showing that this was not the intention of the legislators, this absence would be recognised as a truly progressive step in celebrating the nature of true African traditional healing. It must be asked why this level of cultural acceptance has not been included in the BCEA itself, which has national, and not sectoral, application. Having mentioned that the aforementioned sectors govern employees who are classified as vulnerable, this measure by legislators could be further seen as attempting to protect the cultural and religious freedoms of these employees. These sectors are recognised as being more likely to be exploited, without trade unions and not covered by other wage regulating mechanisms.⁴³⁵ If sick notes from unregistered traditional healers are accepted by the employers of a third of the national workforce through sectoral determinations as was noted by the Development Policy Research Unit of the University of Cape Town during the years of 2001 and 2007,⁴³⁶ this could be extended to all other employers.

Traditional healer sick notes do not on their own create uncertainty in the workplace. It is the regulation under the THPA that creates grounds for speculation and comparison that ultimately places an undue and impossible barrier to complete

⁴³³ Rycroft note 36 above at page 112.

⁴³⁴ Section 23(2) of the BCEA.

⁴³⁵ Development Policy Research Unit note 420 above at 15.

⁴³⁶ See note 420 above.

acceptance of traditional health practitioner sick notes in the workplace.

4.5 Reasonable accommodation and the traditional healer sick note

Reasonable accommodation is practised and experienced in varying ways. It is defined as any modification to a job or the working environment that enables a person to have access to or participate in employment.⁴³⁷ It has at its core, the goal of proportionally bearing upon the rationality of the means of achieving the legitimate purpose of the prohibition.⁴³⁸ By doing this, employees are afforded an opportunity to enjoy more of their rights in the face of existing rules or policies and employers are still able to achieve the desired outcome intended by the rule.⁴³⁹

There is an obligation on employers to reasonably accommodate the religious and cultural diversity of their employees as they should not have to choose between their personal beliefs and management's prerogative.⁴⁴⁰ This was highlighted by the Constitutional Court in the case of *MEC for Education, KZN v Pillay*⁴⁴¹ in which Langa CJ stated that employers must take steps to ensure that all employees enjoy their rights to equality, adding that this was a duty that could be expressed both positively and negatively and might require an employer to incur additional, but not undue hardship.⁴⁴² This implies that any accommodation of religious and cultural beliefs need not be absolute, but reasonable so as to not negatively impact the effectiveness of the business.⁴⁴³

By way of illustration, there have been cases in which employees have refused to work as butchers on days which they celebrated as holidays (such as *Eid Mubarak*) in terms of their Muslim beliefs.⁴⁴⁴ Having found that the absence of the butchers would result in there being no work done by other staff members, the court found that the operational requirements of the employer had to be given primacy in this case, thus invalidating the principle of reasonable accommodation.⁴⁴⁵

⁴³⁷ Van Niekerk note 26 above at page 2880.

⁴³⁸ *Department of Correctional Services v POPCRU* 2013 ZASCA 40 paragraph 43.

⁴³⁹ *MEC for Education, KZN v Pillay* 2008 (1) SA 474 (CC) para 73.

⁴⁴⁰ Van Niekerk note 26 above at 2880.

⁴⁴¹ 2008 (1) SA 474 (CC).

⁴⁴² Van Niekerk note 26 above at 2880.

⁴⁴³ *Ibid* 2882-2883.

⁴⁴⁴ *FAWU & others v Rainbow Chicken Farms* [2001] 1 BLLR 70 (LC).

⁴⁴⁵ Rycroft note 36 above at 106.

In *Dlamini v Green Security*⁴⁴⁶ the Labour Court upheld the dismissal of employees whose religious convictions conflicted with rules applied by their employer.⁴⁴⁷ The rule required that all beards of security officers be shaved as a measure of neatness.⁴⁴⁸ The employees however refused to comply with the rule as they belonged to the Baptist Nazareth Group which prohibited them from shaving their beards.⁴⁴⁹ Upon dismissal, the employees stated that they were discriminated against because of their religious beliefs and as such, their dismissals were unfair in terms of section 187(f) of the LRA.⁴⁵⁰ Although the Labour Court found the belief held by the employees sincere, it also found that the directive for shaving beards was an inherent requirement⁴⁵¹ for the high standards of neatness in the work of a security officer.⁴⁵² Any flexibility in this regard would tarnish the distinctive image of the employer.⁴⁵³

In matters where a dismissal is based on the application of a rule which negatively infringed upon the religious beliefs of employees and the enforcement of such found not to be an inherent requirement of the job, dismissals would be found to be automatically unfair.⁴⁵⁴ This was the case in the *Department of Correctional Services v POPCRU*⁴⁵⁵ case in which it was held that prohibiting male correctional officers from wearing dreadlocks as part of their religious and cultural beliefs and their subsequent dismissals were automatically unfair on the basis of direct and indirect discrimination on the basis of religion, culture and gender. The LAC and SCA did not agree that short hair was an inherent requirement of the job. Male officers having short hair was not an indispensable attribute relating in an inescapable way to the performance of the employees' jobs.⁴⁵⁶ With reference to the cases of *Dlamini* and *POPCRU*, it is found that employers could limit the sincere expression of cultural and religious rights if they negatively affect the operations of an employer and impact on the inherent requirement of a job.⁴⁵⁷

⁴⁴⁶ 2006 11 BLLR 1074 (LC).

⁴⁴⁷ 2006 11 BLLR 1074 (LC) paragraph 72.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid at para 67.

⁴⁵² Ibid at 62.

⁴⁵³ Ibid at para 63.

⁴⁵⁴ *Department of Correctional Services v POPCRU* 2013 ZASCA 40.

⁴⁵⁵ Ibid.

⁴⁵⁶ Van Niekerk note 26 at 2887.

⁴⁵⁷ See notes 451 and 456 above.

With reference to the current discussion, it is suggested that the application of the principle of reasonable accommodation be used in matters regarding the acceptance of traditional healer sick notes in the South African workplace. It has been shown that the regulation of the traditional healing practice has been a challenging task for the Interim Council, resulting in there being no recorded traditional health practitioner registrations nearly 15 years after the enactment of the THPA.⁴⁵⁸ This implies that employers are exempt from paying for sick leave claimed for by employees who have consulted a traditional healer, as registration with the Interim Council activates section 23(2) of the BCEA.⁴⁵⁹ This would limit various constitutional rights of employees including their right to seek medical assistance of their choice.⁴⁶⁰ By following the example set by the sectoral Determinations 1, 7, 12 and 13, it has been shown that unregulated traditional healer sick notes are serving as reliable documents to prove ill health as envisioned by the BCEA through the acceptance of their cultural and religious acceptance.

Employers have been exposed to traditional healer issued sick notes for many years with courts having used their discretion to decide on the acceptance of these notes.⁴⁶¹ Courts have also used the principle of reasonable accommodation to facilitate the meeting of business objectives whilst still giving recognition to the cultural beliefs of their employees.⁴⁶²

An example of acceptance of a traditional healer sick note before the introduction of the THPA can be found in *PPWAWU v Nampak Corrugated Containers*.⁴⁶³ The employee in the case was dismissed after having been absent from work for 14 days without any prior notice or communication being given to their employer. Upon his return to work, the employee explained that he travelled to see a traditional healer in a rural area to get help for his excessive drinking problem. He advised that he had no way of communicating with his employer during this time, but since he had received

⁴⁵⁸ Abrams note 9 above at 8.

⁴⁵⁹ Section 23(2) of the BCEA.

⁴⁶⁰ E Roumeas "Religious diversity in the workplace: The case for Alternative Dispute Resolution" (2020) 68(1) *Political Studies Association* 217.

⁴⁶¹ *PPAWU v Nampak Corrugated Containers* (1998) 3 LLD 48 (CCMA).

⁴⁶² *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* (JA 78/10) [2012] ZALAC 22.

⁴⁶³ (1998) 3 LLD 48 (CCMA).

treatment, he did not suffer from the problem anymore.⁴⁶⁴ He submitted a sick note from his traditional healer which covered the duration of his absence.⁴⁶⁵ The employee was dismissed despite this and challenged this decision in the Commission for Conciliation, Mediation and Arbitration (CCMA). The CCMA commissioner recognised the disturbance an employee's absence has on an employer's operations and that at times this could justify an employer's decision to terminate an employee's employment.⁴⁶⁶ The commissioner also acknowledged that in a diverse society, diseases and their treatment could not be confined to a Eurocentric Western style of medical diagnosis and treatment.⁴⁶⁷ Employees have a right to seek alternative medical assistance when necessary, and that they should be allowed to visit traditional healers to justify their sick leave.⁴⁶⁸ The employee was given another opportunity to continue his employment, and his dismissal overturned.⁴⁶⁹

This case is important as it shows that prior to the enactment of the THPA the CCMA recognised the need for employees to be able to express their cultural beliefs through their selection of a practitioner of their choice.⁴⁷⁰ What was decisive in the matter is that the employee was able to show proof of illness for the duration of his absence and confirmed that he did in fact believe he had been healed.⁴⁷¹ What is of concern however is that the commissioner did not allow for the possibility of the employee being deceitful about his absence. By disregarding the lack of communication from the employee and the impact of his absence on his employer's operations, an incorrect impression is given that the needs of an employer are not important. Employees should communicate their intended absences prior to absenting themselves, or as soon as reasonably possible in cases of sudden illness, to allow employers to make contingency plans. This would be the recommended course of action when employees take any form of leave.

⁴⁶⁴ Carrim note 213 above at 21.

⁴⁶⁵ Rycroft note 36 at 112.

⁴⁶⁶ C Mischke 'From intoxication to addiction – dealing with alcohol-related offences in the workplace' (2004) 14(10) *Contemporary Labour Law* 95.

⁴⁶⁷ Rycroft note 36 above at 112.

⁴⁶⁸ Roumeas note 460 above.

⁴⁶⁹ Mischke note 466 above.

⁴⁷⁰ Rycroft note 36 above at 112.

⁴⁷¹ Carrim note 213 above at page 21.

The case of *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi*⁴⁷² takes the discussion further. In 2007, Johanna Mmoledi was a *Chef de Partie* employed by Kievits Kroon Country Estate for approximately eight years.⁴⁷³ She reported that she was having visions of her ancestors asking her to take on a calling to become a *sangoma* (diviner). This was confirmed by another *sangoma* with whom she consulted, and she was advised that she had to begin her training course.⁴⁷⁴ Mmoledi advised the executive chef ('Walter') and requested that she work morning shifts for the duration of her training course but would work evenings where possible.⁴⁷⁵ Walter accordingly consulted other employees who would be impacted by this request and received their approval.⁴⁷⁶ The arrangement continued from February to May of the same year.⁴⁷⁷ The employee approached Walter once again and advised that she was about to complete her training course and would now need to attend her classes for a period of just over one month in preparation for her graduation. She sought unpaid leave for this period.⁴⁷⁸ Walter took this request to the company's HR manager (Dreyer) and a conditional approval was given as long as the employee used her annual leave for this period. Given that the employee's annual leave days were exhausted, a subsequent offer of one week's unpaid leave was made.⁴⁷⁹ The employee felt the time offered was insufficient and she absented herself from 2 June until 8 July. Before leaving, she left Dreyer a certificate from her traditional healer (Masilo) and a letter advising that she was being prepared for graduation and the time frame she would need to be excused from work.⁴⁸⁰ The certificate contained information pertaining to Masilo and her affiliation with the North West Dingaka Association, her contact details, the date of her first consultation with the employee and expected date of return to work.⁴⁸¹ A diagnosis of 'Perminisions of ancestors' was given by the issuer which was later explained as a condition experienced by a person who had visions of their ancestors.⁴⁸² Mmoledi was subjected to a disciplinary inquiry upon her return to work on various charges of

⁴⁷² (875/12) [2013] ZASCA 189.

⁴⁷³ *Kievits Kroon Country Estate (Pty) Ltd v CCMA* [2011] 3 BLLR 241 (LC) paragraph 3.

⁴⁷⁴ Bellengere and Spurrett note 33 above at 483.

⁴⁷⁵ *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* (JA 78/10) [2012] ZALAC 22 paragraph 5.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ Rycroft, A. "*Business needs, cultural beliefs and fairness: Kievits Kroon Country Estate (Pty) Ltd v Mmoledi and Others* (2014) 35 ILJ 406 (SC)" page 909.

⁴⁷⁸ *Kievits* note 459 at para 6.

⁴⁷⁹ *Ibid.*

⁴⁸⁰ *Ibid* para 7.

⁴⁸¹ *Ibid* para 8.

⁴⁸² *Ibid* at para 10.

misconduct including absenteeism without a valid reason for three days or more.⁴⁸³ In her defence she told the parties that she was seriously ill and had provided proof of this in her certificate.⁴⁸⁴ The chairperson of the disciplinary enquiry found Mmoledi guilty on all charges and recommended dismissal. Mmoledi thereafter referred an unfair dismissal case to the CCMA.

At arbitration, the employer party stated that the request for leave was refused due to the company's operational requirements and that the certificate submitted, did not provide proof of illness. Mmoledi and Masilo gave evidence to the effect that she believed that her calling constituted a sickness that was life-threatening if she did not address it at that time.⁴⁸⁵ The training to become a traditional healer was part of the treatment for her illness.⁴⁸⁶ The commissioner found that the employee's sickness and the intention to complete her training as a healer were not separate matters.⁴⁸⁷ With evidence of the employee's sincere belief of the potential harmful consequences if she was not treated, her actions in disregarding her employer's rules were found to be justified.⁴⁸⁸ The commissioner ordered that she be reinstated without any retrospective payment.⁴⁸⁹

After an unsuccessful attempt to review the CCMA decision in the Labour Court, the employer took the matter to the LAC. The court did not make a distinction between conventional illness and having a condition based on cultural beliefs,⁴⁹⁰ making direct reference to the principle of reasonable accommodation, holding that in essence, the employee had only asked to be accommodated on similar grounds that were agreed to before.⁴⁹¹ Bearing in mind the diverse cultures and belief systems in South Africa, what was needed was reasonable accommodation to achieve the necessary harmony in the workplace.⁴⁹² Tlalesi J found an example of similar accommodation when Walter consulted the staff to accommodate Mmoledi's initial request to work morning shifts.⁴⁹³

⁴⁸³ Ibid.

⁴⁸⁴ Ibid at para 11.

⁴⁸⁵ Ibid at para 14.

⁴⁸⁶ Ibid at paras 12-14.

⁴⁸⁷ Bellengere and Spurrett note 33 above at 484.

⁴⁸⁸ Van Niekerk note 26 at 2881.

⁴⁸⁹ *Kievits* LAC note 459 above para 20.

⁴⁹⁰ Bellengere and Spurrett note 33 above at 486.

⁴⁹¹ *Kievits* LAC note 459 above 25.

⁴⁹² Ibid at para 26.

⁴⁹³ Ibid.

Employees should use time outside of working hours to practise their beliefs in order not to disturb business operations.⁴⁹⁴ However in cases where employees are not able to do so, employers should accommodate employee requests where possible.⁴⁹⁵ Accommodating one another was found to be demonstrating 'Ubuntu' which is a value that underpins South African heritage.⁴⁹⁶ On further appeal to the SCA, the appeal was dismissed yet again, with the court highlighting the importance of cultural convictions as they are protected by the Constitution.⁴⁹⁷ It was acknowledged by the court that while it was better equipped to deal with disputes arising from conventional medicine, this was not the case of a dispute arising from cultural practices.⁴⁹⁸ The court could only assess the sincerity of the belief and whether there were possible ulterior motives on the part of the employee but not the 'acceptability, logic, consistency and comprehensibility of such belief'.⁴⁹⁹

What is significant in this matter is the assertion by the court that had the certificate submitted been considered as equal to a medical certificate from a conventional practitioner, the employee's request would have been accommodated. This is an important finding in that it places the traditional healer sick note on the same level as that of other practitioners in terms of section 23(2) of the BCEA.⁵⁰⁰ Similarly, the court's acceptance accepting that Masilo's testimony and certificate confirmed Mmoledi's illness showed that Masilo's diagnosis had met the standard of section 23(2) of the BCEA.⁵⁰¹

By the time the matter was heard in the SCA, the THPA had been enacted and the Interim Council established months prior. Despite there being no evidence of registrations having taken place, the court was in an ideal position to evaluate the legality of the sick notes from traditional healers in terms of the enacted legislation. Furthermore, it would have been of interest to evaluate Masilo's sick note as it did not comply with section 23(2) of the BCEA, as she was not registered with the Interim

⁴⁹⁴ Rycroft note 36 above at 109.

⁴⁹⁵ Van Niekerk note 26 above at 2882.

⁴⁹⁶ *Kievits* SCA note 459 above para 26.

⁴⁹⁷ *Ibid* at para 23.

⁴⁹⁸ *Ibid* para 27.

⁴⁹⁹ *Ibid*.

⁵⁰⁰ *Kievits* LAC note 459 at 487.

⁵⁰¹ Bellengere and Spurrett note 33 above.

Council.

The decision also seems to be at odds with the THPA's purpose which includes the regulating of the traditional healing practice.⁵⁰² By proposing that traditional healing be understood as a religious doctrine, whose rationality could not be questioned or interrogated by courts, a case for reasonable accommodation is further made by the SCA. In line with this, it is submitted and further emphasised that the approval of sick notes in the workplace should not be a matter of legislation and regulation, but an exercise of respect and accommodation of diversity in the workplace. An inquiry by employers on a legislative legitimacy basis would find the traditional health practitioner's sick note wanting when compared to that of other health practitioners. This is something that is likely to cause frustration and conflict in the workplace.

The case of *Kievits Kroon* must be compared to that of *Tubatse Chrome (Pty) Ltd v MEIBC*⁵⁰³ where the bargaining council reinstated an employee who was dismissed for deserting her employment to undertake an initiation course.⁵⁰⁴ The dismissal was as a result of the employee not reporting for work from 7-14 April 2010. In terms of the applicant's code of conduct, the employee's absence constituted a repudiation of employment, and as such, the employee was informed of her dismissal on the grounds of deemed desertion upon her return.⁵⁰⁵

On appeal, the Labour Court found in favour of the applicant employer and upheld the dismissal of the employee.⁵⁰⁶ The court relied on the *Kievits*⁵⁰⁷ decision. The employee in this matter had also submitted sick notes but these did not state that she would not be fit to work nor was there any evidence to show that the employee would have suffered any adverse consequence had she not continued with her initiation course.⁵⁰⁸ In contrast to *Kievits*, the employee elected to continue with her initiation on 7 April as it was convenient for her to do so but not because she feared that her life or that her

⁵⁰² *Kievits* LAC note 459 above at 493.

⁵⁰³ (2013) 34 ILJ 2333 (LC).

⁵⁰⁴ *Tubatse Chrome (Pty) Ltd v MEIBC* (2013) 34 ILJ 2333 (LC) para 1.

⁵⁰⁵ *Ibid* at para 4.

⁵⁰⁶ Rycroft note 477 above at 915.

⁵⁰⁷ *Kievits* note 459 above at 22.

⁵⁰⁸ *Tubatse Chrome* note 503 above at paragraphs 9-10.

health would further deteriorate.⁵⁰⁹ She elected to do this without any communication or authorisation from the employer or any consideration of the impact her decision would have on the employer's business.⁵¹⁰ With reference to the evidence presented to the commissioner at arbitration, the court found that the employee's absence was not involuntary or justified.⁵¹¹ It was further found that the decision reached by the commissioner was not one that a reasonable commissioner could have arrived at had he or she applied their mind to the issues in dispute. The selection of case law shows that traditional healer notes have been afforded recognition not in terms of the THPA, but through the reasonable accommodation of the employees' belief systems. Employees still have an obligation to explain their absence and cannot hide behind the submission of sick notes to excuse extended absences.⁵¹² There remains a duty on employees to communicate their absences and the reasons for these, the duration of their absence and any other information that could give the employer further understanding of their condition,⁵¹³ this being the same as in the case of other employees who have absented themselves from work and have consulted other health practitioners. The sincerity of the beliefs held by employees can also be used by employers to warrant the absence of the employee.⁵¹⁴

Mbatha et al write about initiatives embarked on by employers to recognise the African cultural beliefs of employees who use the services of traditional healers,⁵¹⁵ including the acceptance of sick notes from traditional healers by the University of Pretoria.⁵¹⁶ They also mention an initiative by the Chamber of Mines and the National Union of Mineworkers, whereby a panel of traditional healers has been created at the mines, allowing their staff three days per year to consult with these traditional healers outside of their normal sick leave entitlement.⁵¹⁷ This is similarly done by Sun International in alliance with the South African Commercial Catering and Allied Workers Union.⁵¹⁸ The University of KwaZulu-Natal (UKZN) has gone as far as employing a traditional healer

⁵⁰⁹ Ibid at para 10.

⁵¹⁰ Ibid.

⁵¹¹ Ibid at paras 11-12.

⁵¹² Rycroft note 477 above at 911.

⁵¹³ Ibid.

⁵¹⁴ *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi and Others* ILJ paragraph 27.

⁵¹⁵ Mbatha note 3 at 130.

⁵¹⁶ Ibid.

⁵¹⁷ Ibid.

⁵¹⁸ Ibid.

in the student counselling and wellness programme;⁵¹⁹ Makhosi Mkhize provides traditional healing services to the university's staff and students.

4.6 Chapter conclusion

This chapter has discussed how the unplanned absence of an employee due to sickness, negatively impacts the operational needs of a business. To control these absences, employers introduce measures of control through workplace policies which support existing legislation.⁵²⁰ The submission of sick notes for the payment of sick leave is a measure of control introduced by the BCEA. Sick notes issued by conventional practitioners are seen as the trusted standard by institutions and employers.⁵²¹

The enactment of the THPA has made it necessary for employers to accept sick notes from traditional health practitioners.⁵²² In businesses not regulated by the contract cleaning, domestic worker, forestry and agricultural Determinations, the validity of these notes hangs on the registration of traditional healers with the Interim Council. No known registrations exist in terms of available legislation, negating an objective criterion to test for the validity of these documents, failing to satisfy employers that sick leave benefits are not being abused.⁵²³

However, the acceptance of traditional healer sick notes remains critical for the recognition of the traditional beliefs of many South African employees. Cultural beliefs lead people to traditional healers who cater to the patient's physical, spiritual and emotional well-being.⁵²⁴ Reasonable accommodation of these sick notes ensures that the beliefs of employees who seek alternative medical assistance are not ignored for the convenience of employers.

⁵¹⁹ Ibid.

⁵²⁰ Singh note 357 above at 111.

⁵²¹ Bellengere and Spurrett note 33 at page 488.

⁵²² Section 23(2) of the BCEA.

⁵²³ Bellengere and Spurrett note 33 at 493.

⁵²⁴ *Kievits* ILJ note 498 paragraph 24.

CHAPTER FIVE

FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

Traditional healers play a vital role in both the cultural life and health care of many South Africans. The enactment of the THPA to regulate traditional health practice was long overdue for a practice that is central to the country's primary health care system.⁵²⁵

The enactment THPA⁵²⁶ required the establishment of the Interim Council to drive the implementation of the Act's provisions.⁵²⁷ One of the primary functions of the Interim Council is to register all practising and student traditional healers,⁵²⁸ enabling these them to issue valid sick notes to employees who were absent from work, entitling them to payment for the period off work in terms of sections 22 and 23(2) of the BCEA.⁵²⁹ The provisions of the THPA are vague in this respect as well as in the necessary training and qualifications provisions. The THPA is also silent on the actual content necessary for a valid medical certificate issued by a traditional health practitioner – necessary for employers to accept the operational disturbance experienced when an employee is absent from work due to illness.

There are obvious problems with the mandate issued to the Interim Council, the consequence of which leaves them unable to fulfil their objectives and functions as listed in the THPA.⁵³⁰ The Interim Council has failed to introduce a code of conduct or a similar document to provide guidelines for the issuing, content and requirements of a valid sick note,⁵³¹ which would assist in monitoring the conduct of those registered with the body – as is the case with practitioners under section 23(2) of the BCEA in which their competency and professionalism are assessed and standardised.

⁵²⁵ Tshela note 22 above at 279.

⁵²⁶ Act 22 of 2007.

⁵²⁷ Section 2 of the THPA.

⁵²⁸ Section 18 - 26 of the THPA.

⁵²⁹ Tshela note 22 above at 279.

⁵³⁰ Sections 5 and 6 of the THPA.

⁵³¹ Maserumule note 38 above at page 3.

5.2 Findings and recommendations

The difficulties faced by employers in accepting sick notes from traditional healers is often concomitantly met by a desire to also recognise the cultural beliefs of their employees, to give the latter a feeling of self-worth and to create a harmonious working environment.⁵³² In the absence of registration with the Interim Council, sick notes received from traditional healers can result in the non-payment for sick leave for employees who submit such notes,⁵³³ thus creating disharmony in the workplace and the infringement of the religious and cultural freedoms held by such employees. As proposed by Mbatha et al, businesses where possible, are encouraged to implement initiatives to further recognise and accommodate the cultural beliefs of their staff to engender understanding and trust between employers and their employees.⁵³⁴

Research has found that the legislative framework created by the THPA, and the regulations do not sufficiently embrace the spiritual nature of the traditional healing practice.⁵³⁵ There is no reference to symbolism, spirituality or ancestors in the legislation, all of which are at the heart of traditional healing. The THPA and the regulations seem to demonstrate ignorance of the essential practice of traditional healing. Examples can be found in the cases of *Kievits Kroon*⁵³⁶ and *Tubatse Chrome*⁵³⁷ discussed in this dissertation, where two females completed their training to become *izangoma*, one within five months and the other in eight days, falling short of the legislative requirement of 12 months.⁵³⁸

Research has revealed numerous other gaps in the legislative framework relating to traditional healing in South Africa. Since its inauguration in 2013, the Interim Council has failed to create an objective assessment measure to control this registration process.⁵³⁹ This would include a training curriculum that would ideally suit all categories of traditional healers. It has been shown that while the regulations have offered some guidelines to support the provisions of the THPA, they are not exhaustive

⁵³² Carrim note 213 above at page 16, *Kievits* note 480 at paragraph 26.

⁵³³ Section 23(2) of the BCEA.

⁵³⁴ Mbatha note 3 above at page 130.

⁵³⁵ Note 339 above.

⁵³⁶ *Kievits* (LC) note 480 above at 241.

⁵³⁷ *Tubatse* LAC note 512 at 2333.

⁵³⁸ Section 6(2) of the Traditional Health Practitioner Regulations of 2015.

⁵³⁹ Tshela note 22 above at 279.

as concerns over content and the identification of training still exists. This is undoubtedly a reason for there not being any known registrations of traditional health practitioners to date.

In consequence of the legislative work to be done on the THPA and members of the Interim Council,⁵⁴⁰ it is recommended that the BCEA itself be amended to provide an exemption for traditional healers who are not registered as traditional health practitioners under the THPA, in line with sectoral Determinations approved by the Minister of Labour. This recommendation differs little from the practice in recent years where courts have accepted the validity of sick notes from traditional healers who have not met the requirements of section 23(2).⁵⁴¹

The following principles have been extracted from existing case law in support of this recommendation:

- a) The right to religious and cultural expression is a fundamental right enshrined in the Constitution and should be respected by all.⁵⁴² Exceptions of this are found even when employees hold sincere beliefs. This is in the event that the cultural and religious beliefs negatively impact the operational and inherent requirements of an employer.⁵⁴³
- b) Whilst operational requirements are important for employers and also employees,⁵⁴⁴ an employee's health or well-being associated with their cultural beliefs, might take precedence.⁵⁴⁵
- c) Reasonable accommodation of these cultural beliefs is required in a quest to create harmony in the workplace according to the fundamental spirit of 'ubuntu' which our society has been built upon.⁵⁴⁶
- d) A sick leave application for an employee who has visited an unregistered traditional healer cannot be disregarded on the basis of its non-compliance with section 23(2) of the BCEA.

⁵⁴⁰ Moshabela, Zuma and B Gaede note 8 above at 89.

⁵⁴¹ BCEA.

⁵⁴² *Kievits* note 480 at para 26.

⁵⁴³ See notes 451 and 456 above.

⁵⁴⁴ Phooko note 362 above at 615.

⁵⁴⁵ *Kievits* (LC) note 457 at para 19.

⁵⁴⁶ *Ibid* at para 26.

- e) Employers must establish whether the employee has a sincere belief in traditional healing and where necessary, ask the employee to explain the nature and identity of the healer and the illness in question.⁵⁴⁷ Employers should also ascertain whether the employee has an ulterior motive for taking this leave.⁵⁴⁸
- f) Employees may also submit sick notes from traditional healers even when they are not ill but when wanting to observe their cultural calling or another condition. This benefits the employer in that it offers documentary evidence of the employee's condition and inner compulsion from a person trained in methods of traditional healing.⁵⁴⁹

Importantly, legislators have sanctioned the acceptance of sick notes from traditional healers in certain economic sectors in the face of contrary provisions in the BCEA and THPA.⁵⁵⁰ Submission of these sick notes would result in the payment of sick leave claims. This would not compromise the practice of traditional healers by requiring them to conform to an alien western system. The contract cleaning, domestic worker, forestry and agricultural sectoral Determinations mandate complete acceptance of sick notes issued by traditional healers for employees within their sectors.⁵⁵¹ This acceptance is conditional for other employers in terms of the requirements of section 23(2) of the BCEA.

5.3 Conclusion

Sick notes from medical practitioners are accepted as reliable sources for proof of illness for employers as shown by the BCEA's acceptance in section 23(2) of same Act. The same cannot be said for sick notes from traditional health practitioners which, due to lack of objective standards and requirements under the relevant legislative framework, do not provide an employer with any certainty.

Obviously, the issues around sick notes have created tension between employees and employers.⁵⁵² This will worsen in the coming years on a plain reading of the BCEA, allowing employers to reject sick notes received from unregistered traditional healers

⁵⁴⁷ Note 431 and 492 above.

⁵⁴⁸ *Dlamini v Green Security* note 446 above at 917.

⁵⁴⁹ *Ibid.*

⁵⁵⁰ See notes 414, 415, 416 and 417 above.

⁵⁵¹ Section 25(7)(c) of the Sectoral Determination 12: Forestry Sector, South Africa; Section 22(7) of the Sectoral Determination 13: Agricultural Sector, South Africa.

⁵⁵² Phooko note 362 at page 614.

for failure to meet the conditions of section 23(2). However, the case of *Kievits*⁵⁵³ shows that employers will not be able to question the acceptability, logic, consistency and comprehensibility of such documents as they are evidence of the expressions of belief systems.⁵⁵⁴ This leaves employers confused and uncertain about what they can do when they suspect that employees are submitting fraudulent documents or abusing their sick leave allowances. The problem lies squarely in the fact that legislators have attempted to regulate the cultural and religious beliefs of people.⁵⁵⁵ This is not done for any other major religion in South Africa.⁵⁵⁶ The problem therefore lies not only in the current legislative framework, but with the regulation of how employees and traditional healers are to express their religious and cultural freedom. Regulation has compromised the traditional healing practice in asking for its custodians to conform to a western standard.

Accommodating the African cultural beliefs of employees will ease tensions which are encouraged by the scrutiny required through regulation of traditional health practice. This is a step further than the sectoral Determinations discussed in chapter four, the result of which has not seen chaos or any upheaval within the sectors themselves and is unlikely to do so if universally applied to all workplaces.

⁵⁵³ *Kievits* ILJ note 498 above.

⁵⁵⁴ *Ibid* at para 27.

⁵⁵⁵ Van Niekerk note 26 above at 106.

⁵⁵⁶ *Ibid* 105.

BIBLIOGRAPHY

Legislation

- The Constitution of the Republic of South Africa Act 108 of 1996
 - Section 9
 - Section 10
 - Section 15
 - Section 18
 - Section 30
 - Section 31
 - Section 36
 - Section 36(1)

- Traditional Health Practitioners Act 35 of 2004
 - Section 1

- Traditional Health Practitioners Act 22 of 2007
 - Section 1
 - Section 2
 - Section 4
 - Section 5
 - Section 6
 - Section 7
 - Section 10
 - Section 12
 - Section 18
 - Section 19
 - Section 20
 - Section 21
 - Section 22
 - Section 23
 - Section 24
 - Section 25
 - Section 26
 - Section 31

- Section 47

- Traditional Health Practitioners Regulations of 2015
 - Section 1
 - Section 3
 - Section 4
 - Section 5
 - Section 6
 - Section 7
 - Section 9

- Basic Conditions of Employment Act 75 of 1997
 - Section 2
 - Section 3
 - Section 22
 - Section 23

- Labour Relations Act 66 of 1995
- Health Professions Act 56 of 1974
 - Section 16
 - Section 17

- Ethical Guidelines for Health Care Professions.
 - Section 2
 - Section 16

- Allied Health Professions Act 63 of 1982
 - Section 15

- Code of Ethics, Allied Health Professions Act
 - Sections B – I
 - Section M

- Basic Conditions of Employment Act 75 of 1997, sectoral Determinations 1: Contract Cleaning Sector
 - Section 19
- Basic Conditions of Employment Act 75 of 1997, sectoral Determinations 7: Domestic Worker Sector
 - Section 20
- Basic Conditions of Employment Act 75 of 1997, sectoral Determinations 12: forestry sector
 - Section 25
- Basic Conditions of Employment Act 75 of 1997, sectoral Determinations 13: farm worker sector
 - Section 1
 - Section 22
- Government Gazette 31020, Proclamation by the President of the Republic of South Africa, Notice 17 of 2008
- Government Gazette 31271, Notice: Draft Policy on African Traditional Medicine for South Africa, Notice 906 of 2008

International and Regional Instruments

- World Health Organization (WHO) (2007) *Working for Health: An Introduction to the World Health Organization* Available from https://www.who.int/about/brochure_en.pdf Accessed on 23 January 2022.
- World Health Organization (WHO) (2002) *Traditional Medicine Strategy 2002-2005* Available at https://www.beovita.eu/pdf/WHO_EDM_TRM_2004.pdf
- World Health Organization (WHO) (1995) *Guidelines for Training Traditional Health Practitioners in Primary Health Care* Accessed on 16 October 2021.
- Organisation of African Unity (OAU) *Constitutive Act of the African Union* Available at https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf Accessed 23 January 2022.

Case law

- *Bagshaw Footwear v CCMA* (2016) ZALCPE 3
- *Department of Correctional Services v POPCRU* 2013 ZASCA

- *Dlamini v Green Security* 2006 11 BLLR 1074 (LC)
- *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC)
- *FAWU v Rainbow Chicken Farms* [2001] 1 BLLR 70 (LC)
- *Old Mutual Life Assurance Co SA Ltd v Gumbi* [2007] 4 All SA 866 (SCA)
- *MEC for Education, KZN v Pillay* 2008 (1) SA 474 (CC)
- *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* (875/12) [2013] ZASCA 189
- *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* (JA 78/10) [2012] ZALAC 22
- *Kievits Kroon Country Estate (Pty) Ltd v CCMA* [2011] 3 BLLR 241 (LC)
- *PPWAWU v Nampak Corrugated Containers* (1998) 3 LLD 48 (CCMA)
- *Tubatse Chrome (Pty) Ltd v MEIBC* (2013) 34 ILJ 2333 (LC)

Books

- Currie, I and De Waal, J. *The Bill of Rights Handbook* 6 ed (Juta Cape Town 2013)
- Carrim, N. *Religious diversity in the workplace* (Farnham UK: Gower 2015)

Journal Articles and Electronic Sources

- Abrams et al, 'Legislative landscape for traditional health practitioners in Southern African development countries: a scoping review' (2020) *BMJ Open - A Leading Multidisciplinary Medical Journal* Accessed on 22 March 2020.
- Albertyn, W. 'Medical certificates from Traditional Healers' (3 September 2015) *LabourMan Consultants* Available at <https://labourman.co.za/medical-certificates-from-traditional-healers/> Accessed on 9 October 2021.
- Andrews, P. 'Affirmative action in South africa: Transformation or Tokenism' (1999) *New York Law School Articles and Chapters* Accessed on 10 December 2022.
- Badubi, R. (2017) 'A critical risk analysis of absenteeism in the workplace'
- Bannister, P. 'Regulating 'tradition' South African izangoma and the Traditional Health Practitioners Act 2004' (2007) (2007-2008) 27(1) *The Cambridge Journal of Anthropology* Vol. 27, No. 1 (2007/08), Also available at <https://www.jstor.org/stable/23820708> Accessed on 22 March 2020.
- Bellengere, A and Spurrett, D. 'A discordant note: Kievits Kroon Country Estate v Mmoledi' (2015) 15(132) *South African Law Journal* 483-493
- Bennet, TW and Pillay, A. (2003) 'The Natal and KwaZulu codes: A case for repeal' (2003) 19(2) *African Journal of Human Rights* Accessed on 29 April

2020.

- Bernard, R 'Reasonable accommodation in the workplace: To be or not to be?' (2014) 17 (6) *Potchefstroom Electronic Law Journal* 2870-2891.
- Boyane, T. 'The Traditional Health Practitioners Act and its Remedies: Reflections after the Operationalisation of the Majority of the Act's Provisions' (2016) *South African Law Journal* 28-37.
- Chenia, M. 'Traditional healers and sick leave' (2013) 13(8) *Without prejudice* 18 - 19.
- De Andrade, V. 'Traditional healers and modern doctors do not understand each other because they learn different things' South African traditional health practitioners training with regards to hearing impairment' (2011) *International Journal of Health Promotion and Education* 120-127.
- De V van Niekerk, J. 'Traditional healers formalised' (2012) *South African Medical Journal* 105-6.
- Devenish, A. 'Negotiating healing: The politics of professionalization amongst traditional healers in KwaZulu-Natal' (2006) 31 (2) *Social Dynamics* 1 - 36.
- Dhlewayo, N. et al 'Missing in action: Perspectives on employee absenteeism in the South African Police Service' (2021) 7(1) *Cogent Social Sciences* 1 - 17.
- Guma, P and Sekgothe, M. (2021) 'The historical relationship between African indigenous healing practices and Western-orientated biomedicine in South Africa: A challenge to collaboration' Available at <https://doi.org/10.4102/hts.v76i4.6104> Accessed on 18 September 2021.
- Henrico, R. 'The role played by human dignity in religious discrimination disputes' (2014) 35(1) *Obiter* 24- 35.
- Kale, R. 'Traditional Healers in South Africa: A Parallel Health Care System' (1995) 310 (6988) *British Medical Journal* 1182-1185.
- Kanamuguire, J. 'The concept of managerial prerogative in South African labour law' (2014) 5(20) *Mediterranean Journal of Social Sciences* 424-437.
- King, B. 'We pray at the church in the day and visit the sangomas at night' Health discourses and traditional medicine in rural South Africa' (2012) 102(5) *Annals of the Association of American Geographers* 1173-1181.
- Kocakular, M et al. 'Absenteeism problems and costs: causes, effects and cures' (2016) 15 (3) *International Business and Economics Research Journal*

89-96.

- Marovic, Z and Machinga, M. 'African Shamanic knowledge and transpersonal psychology: Spirits and healing in dialogue' (2017) 49(1) *The Journal of Transpersonal Psychology* 31 - 45.
- Mbatha, N. et al 'Sick certificates issued by South African Traditional Health Practitioners: Current legislation, challenges and the way forward' (2012) 102(3) *South African Medical Journal* 129-131.
- Mischke, C. 'From intoxication to addiction – dealing with alcohol-related offences in the workplace' (2004) 14(10) *Contemporary Labour Law* 91-100.
- Mlisa, N. 'Encountering the other: Jungian analysts and traditional healers in South Africa Part III: The traditional health practitioner's stance and the world view' (2020) 65(1) *Journal of Analytical Psychology* 212-215.
- Mokgobi, M (2015) 'Understanding traditional African healing' (2015) *Afr J Phys Health Educ Recreat Dance* 24-34.
- Moshabela, M Zuma T & Gaede B 'Bridging the gap between biomedical and traditional health practitioners in South Africa' (2016) 1 *South African Health Review* 83 - 92.
- Nemutandani et al, 'Perceptions and experiences of allopathic health practitioners on collaboration with traditional health practitioners in post-apartheid South Africa' (2016) 8(2) *Afr J Prim Health Care Fam Med.* 1007.
- Nyundu, T and Naidoo, K. 'Traditional healers, their services and the ambivalence of South African youth' (2016) 14(1) *Commonwealth Youth and Development* 144-155.
- Peltzer, K et al 'Evaluation of a safer male circumcision training program for traditional surgeons and nurses in the Eastern Cape, South Africa' (2008) 4 *African Journal of Traditional, Complementary and Alternative Medicines* 346 – 354.
- Peltzer, K. 'Traditional health practitioners in South Africa' (2009) 374 *African Journal of Traditional, Complementary and Alternative Medicines* 956 - 957.
- Phooko, M. and Mnyongani, F 'When ancestors call an employee: Kievits Kroon Country Estate (Pty) Ltd v Johanna Mmoledi and others' (2013) 25 *SA Mercantile Law Journal* 606 – 618
- Prinsloo, M and Huysamen, E. 'Cultural and religious diversity: Are they

effectively accommodated in the South African workplace' (2018) 22 *Law Democracy and Development* 26-38.

- Rautenbach, C. 'Some comments on a new legislative framework for female traditional healers in South Africa' (2008) 22(1) *Emory International Review* 113 - 132.
- Ritcher, E. 'Annual leave and shut-down periods' *Farmer's Weekly* 2 December 2016 at 25.
- Roumeas, E. 'Religious diversity in the workplace: The case for Alternative Dispute Resolution' (2020) 68 (1) *Political Studies Association* 207-223.
- Rycroft, A. 'Accommodating religious or cultural beliefs in the workplace: *Kievits Kroon Country Estate v CCMA; Dlamini v Green Four Security; POPCRU v Department of Correctional Services*' (2011) *South African Mercantile Journal* 106-113.
- Rycroft, A. 'Business needs, cultural beliefs and fairness: *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi and Others* (2014) 35 *Industrial Law Journal* 908-917.
- Setswe, G. 'The role of traditional healers and primary health care in South Africa' (1999) 4(2) *Health SA/ Gesondheid* 56-60.
- Singh, T. et al 'An investigation into the impact of absenteeism on the organisational performance of a private security company in Durban, KwaZulu-Natal' (2016) 4(11) *Singaporean Journal of Business Economics, and Management Studies* 105.
- Sodi, T. et al 'Indigenous healing practices in Limpopo Province of South Africa: A qualitative study' (2011) 49(3) *International Journal of Health Promotion and Education* 101-110.
- Street, R. et al 'Traditional health practitioners and sustainable development: a case study in South Africa' (2018) 165 *Public Health* 9-15.
- Street, R. 'Unpacking the new proposed regulations for South African traditional health practitioners.' (2016) 106(4) *South African Medical Journal* 325-26.
- Summerton, J 'The incorporation of African traditional health practitioners into the South African health care system' (2005) 38 (1) *Acta Academica* 143 – 169.
- Thornton, R. 'The transmission of knowledge in South African traditional healing' (2009) 79(1) *Journal of the International African Institute* 17.

- Tshehla, B. 'Traditional health practitioners and the authority to issue medical certificates.' (2015) 105 (4) *South African Medical Journal* 279-280.
- Van Niekerk, J. 'Medical certificates under the Traditional Health Practitioners Act: The issue of validity and reliability' (2019) 22(1) *Potchefstroom Electronic Law Journal* 1 – 35.
- Van Rooyen et al 'Evidence-based recommendations to facilitate professional collaboration between allopathic and traditional health practitioners' (2017) 22 *Health SA Gesondheid* 291-299.
- Wreford, J. 'Long-nosed hybrids? Sharing the experiences of white izangoma in contemporary South Africa' (2007) 33 (4) *Journal of Southern African Studies* 829–843.
- Zuma, T et al. 'The role of traditional health practitioners in Rural KZN, SA generic or mode-specific' (2016) 16(304) *BMC Complementary and Alternative Medicine* 2.

Dissertations and Governmental Research Papers

- Gutsa, L. '*Factors affecting absenteeism at ArcelorMittal South Africa*' Master of Commerce in Business Management, University of Johannesburg 2018.
- Development Policy Research Unit 'Addressing the plight of vulnerable workers: The role of Sectoral Determinations' School of Economics, University of Cape Town 2010.
- Tsotetsi, S. '*Affirmative action as a mechanism for education reform in South Africa*' Master of Education in Comparative Education, University for Christian Higher Education of Potchefstroom 2002

Online Searches

- African Union (AU) Available from <https://au.int/en/overview> Accessed on 23 January 2022.
- Adult Basic Education and Training, (ABET) Available at <https://abet.co.za/about-abet/> Accessed on 1 February 2022.
- Allied Health Professions Council Available at <https://ahpcs.co.za/registration-requirements/> Accessed on 21 November 2021.
- Maserumule Corporate Employment Law (2016) '*Medical certificates from traditional health practitioners*' Available at <https://www.masconsulting.co.za/medical-certificates-from-traditional-health->

practitioners/ Accessed on 22 March 2020.

- Southern African Development Community (SADC) Available at <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/> Accessed on 23 January 2022.
- The Fair Labour Practice, Available at <http://www.fairlabour.co.za/news/2016/09/20/sectoral-Determinations/> Accessed 15 December 2021.

Miss Lulu Nosipho Dlamini (214585094)
School Of Law
Howard College

Dear Miss Lulu Nosipho Dlamini,

Original application number: 00008181

Project title: The status of traditional healer medical certificates in a South African workplace and its impact in the workplace?

Amended title: Exploring the traditional health practitioner's medical certificate in the workplace.

Exemption from Ethics Review

In response to your **amendment** application received on 23rd March 2022, your school has indicated that the amendment has been granted **EXEMPTION FROM ETHICS REVIEW**.

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

In case you have further queries, please quote the above reference number.

PLEASE NOTE:

Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours sincerely,

[Redacted Signature]

Mr Matthew Blain Kimble
obo Academic Leader Research
School Of Law

UKZN Research Ethics Office
Westville Campus, Govan Mbeki Building
Postal Address: Private Bag X54001, Durban 4000
Website: <http://research.ukzn.ac.za/Research-Ethics/>