

# IN THE HIGH COURT OF SOUTH AFRICA

## GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE YES/ <del>NO</del>
(2)	OF INTEREST TO OTHERS JUDGES YES/ <del>NO</del>
(3)	REVISED
28/4/16	<i>[Signature]</i>
DATE	SIGNATURE

Heard on: 17 March 2016

Judgment on: 28 April 2016

28/4/2016  
Case Number: A480/2014

In the matter between:

**NETCARE HOSPITALS (PROPRIETARY) LIMITED**

Appellant

and

**THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA**

First Respondent

**THE CHAIRPERSON OF THE UNDESIRABLE BUSINESS**

**PRACTICE COMMITTEE**

Second Respondent

**THE MINISTER OF HEALTH**

Third Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL**

**SERVICE**

Fourth Respondent

---

## JUDGMENT

---

**Canca AJ**

### **INTRODUCTION**

- [1] Two matters serve before us for determination, an appeal and a review.
- [2] In the first matter, the appellant, Netcare Hospitals (Proprietary) Limited ("Netcare") appeals a decision in terms whereof Netcare was denied accreditation to employ radio therapists and medical physicists at those of its hospitals that provide oncology health services. The decision was taken by virtue of powers delegated to it by the Health Professions Council of South Africa ("HPCSA").
- [3] The appeal is brought in terms of the provisions of section 20 of the Health Professions Act, 56 of 1974 ("the Act").<sup>1</sup> Netcare prays that the appeal be upheld and that the decision of the Committee, and *a fortiori* of the HPCSA, refusing the accreditation application, be set aside and be replaced by a decision approving the application.
- [4] The Committee is a sub-committee of the HPCSA and was established in terms of section 10 of the Act at a meeting of the HPCSA held on 10 and 11

---

<sup>1</sup> Section 20 of the Act provides that:

"(1) Any person who is aggrieved by any decision of the council, a professional board or a disciplinary appeal committee, may appeal to the appropriate High Court against such decision.  
(2) Notice of Appeal must be given within one month from the date on which such decision was given."

May 2004. A decision of the Committee is, by virtue of the delegation of powers, a decision by the HPCSA.

[5] In the second matter, Netcare, together with the second and third applicants, respectively employed as a medical physicist and a radiotherapist by Netcare, apply that the appeal be heard together with an associated review application brought in terms of the provisions of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). The purpose of the review application is to obtain an Order reviewing and setting aside the decision of the Committee to deny Netcare the requisite accreditation to employ medical physicists and radiotherapists.

[6] The first and second respondents oppose both matters on various grounds including that the Committee properly exercised the discretion granted to it by subordinate legislation<sup>2</sup> when it refused Netcare accreditation to employ the aforementioned healthcare workers. Although the third and fourth respondents filed a Notice of Intention to Oppose, they did not file any other papers nor were they represented at the hearing of these matters.

### **BRIEF LEGISLATIVE FRAMEWORK**

[7] The Act governs the conduct of the professional activities of health professionals within the South African health care sector. The HPCSA, a statutory body established under the Act, requires healthcare professionals, including practitioners such as medical physicists and radiotherapists, to be

---

<sup>2</sup> The relevant subordinate legislation is The Ethical Rules referred to in paragraph 8 below.

registered as such in terms of the Act. These practitioners are subject to the authority and professional control of the HPCSA.

- [8] Acting under the powers afforded to it in terms of Section 49 read with Section 61 (2) and Section 61 A (2) of the Act to make rules or to adopt policies relating to any matter which, in terms of the Act, is required to be or may be promulgated as rules, the HPCSA published the Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act, 1974 ("the Ethical Rules"). The Ethical Rules appeared in Government Notice R717 in Government Gazette 29079 of 4 August 2006.
- [9] The Ethical Rules set out the ethical guidelines to which practitioners registered under the HPCSA must adhere and, *inter alia*, regulate the manner in which they may operate their practices and the various forms the practitioners may use to conduct those practices.
- [10] The Schedule to the Ethical Rules contains, amongst other things, Rules 8 and 18. Rule 8 of the Ethical Rules sets out the forms of practice in which a healthcare professional may conduct his or her profession. This rule also provides that a practitioner is not permitted to practise in any form of practice which has inherent requirements or conditions that violate or may violate any of its sub-rules or an annexure to those rules. Rule 18, provides, *inter alia*, that a non-practitioner can only employ a healthcare practitioner registered with the HPCSA if the non-practitioner is accredited by the HPCSA and only if the employment contract of that practitioner complies with the provisions of Rule 18.

- [11] The effect of Rule 18 is that an unregistered employer, such as Netcare should obtain accreditation from the HPCSA to employ healthcare professionals. Once accredited, the employer may employ such practitioners provided that it does so in accordance with written employment contracts that comply with Rule 18. Accepting employment with an employer that is not accredited amounts to unprofessional or unethical conduct by the practitioner, which conduct may be visited with a sanction of a suspension or removal from the Register of Practitioners by the HPCSA.
- [12] Netcare is not accredited to employ medical physicists and radiotherapists. Consequently, having accepted employment with Netcare since 2010 and 1989 respectively, the second and third applicants, may be liable to a charge of unprofessional or unethical conduct and possibly removal from the Register of Practitioners.
- [13] In an endeavour to regulate business practices within the healthcare profession, the HPCSA published the Policy Document on Undesirable Business Practices ("the Policy Document") in 2005. This Policy Document deals, amongst other things, at paragraph 2.2.2, with the issue of the employment of registered practitioners by parties who are not registered practitioners and provides a route for such parties to follow in order to be allowed to employ registered practitioners. It also seeks to distinguish between those business practices that are desirable or beneficial to patients and those that are not.
- [14] The provisions of paragraph 2.2.2 of the Policy Document which are relevant for purposes of this judgment, provide that:

*"As a basis for considering these applications [the employment of practitioners by non-practitioners], the motive for the proposed employment should be carefully considered. If the motive is to generate income to the employer, or to remunerate the employee on a fee-sharing basis, it should not be approved."* and

*"If employment of practitioners is approved, applications for employment should be carefully considered taking the following criteria into consideration:*

- 1. Motive or Goal: This should indicate the reason for employment.*
- 2. Service to specific groups of people: Such as non-profit, charitable and similar organisations. Private Hospitals should not be allowed to employ because of a profit motive.*
- 3. Training of students: Such as at Universities set out above.*
- 4. Clinical independence of practitioner: Practitioners should refrain from engaging in practices that would compromise patient care or in services not indicated in order to acquire financial or material benefit. No undue influence should be exerted on [a] practitioner to compromise his clinical independence.*
- 5. Method of remuneration: There should be no Perverse Incentives.*  
*Undesirable practice enriching a practitioner either financially or in kind at the cost of a payer for professional practice with no evidence based scientific basis or cost effective considerations.*

*Furthermore, all employing institutions should be accredited by the HPCSA subject to the condition that the practitioner's clinical independence is not violated by the employing body and that the employing body does not exploit the practitioner or make the practitioner to violate Council ethical rules."*

The legal effect of the criteria contained in these provisions is dealt with in paragraph 32 below.

[15] The Committee is tasked with the implementation of the Policy Document and the assessment of applications made to the HPCSA in respect of matters which are covered by the Policy Document.

[16] A person who is aggrieved by a decision of the HPCSA, a professional board or a disciplinary appeal committee is entitled, in terms of the provisions of Section 20 of the Act, to appeal directly to the High Court against such a decision, within a month of the decision having been made.

### **BACKGROUND FACTS**

[17] Netcare owns 54 private hospitals in South Africa, of which seven have oncology units dedicated to the treatment of malignancies and the provision of oncology health care services. Netcare has employed medical physicists and radiotherapists for more than a decade in order to offer the aforementioned services at those hospitals.

[18] Acting in accordance with the provisions of the Policy Document, Netcare applied for accreditation to employ radiotherapists and medical physicists on 31 January 2014. The application was fairly comprehensive. I set out hereunder the salient factual averments that were placed before the Committee, namely that:

18.1 The treatment provided by the oncology units is in accordance with Internationally accepted protocols and applies advanced technology;

- 18.2 The patients in those units are treated by a team led by an oncologist. The team is interconnected and the radiotherapist and medical physicist cannot by themselves initiate treatment of a patient;
- 18.3 A patient's treatment protocol is determined by the oncologist, who is not employed by Netcare and is subject to the discipline and control (including the ethical constraints and professional responsibilities) of the HPCSA. Furthermore, it is the oncologist who determines the treatment protocol. The radiotherapist and medical physicist do not determine whether a patient receives treatment at all or how much treatment the patient should receive;
- 18.4 Netcare is uninvolved in the treatment processes and because the radiotherapists and medical physicists do not determine if a patient should be treated or what treatment he or she should receive, Netcare cannot exercise any indirect control over the treatment. Nor can Netcare direct, via any control it might have over radiotherapists and medical physicists employed by it, that treatment should be initiated or the extent thereof. Consequently, Netcare cannot manipulate the radiotherapists or medical physicists to gain any financial advantage for itself;
- 18.5 The radiotherapists and medical physicists are salaried employees whose remuneration is based on experience and qualifications. They do not receive commission or volume based bonuses;



- 18.6 Netcare is affiliated to a number of tertiary institutions where it assists and contributes towards the training of students in the field of radiotherapy, medical physics and oncology;
- 18.7 The cost of establishing an independent oncology centre is beyond the capacity of most individuals, given that the cost of establishing such a centre is in the vicinity of R32 million; and
- 18.8 Being employed by Netcare will give the medical physicists and radiotherapists greater benefits than having to work as consultants or private practitioners. These benefits include, for example, regular working hours, job security, paid leave including holiday leave, the benefits of collective bargaining, medical aid, maternity leave and contributions to the practitioners' Unemployment Insurance Fund in terms of the Unemployment Insurance Contributions Act 4 of 2002, as amended.

Netcare concluded its application by stating that it had met the requirements set out in the Policy Document and that it ought therefore to be granted the accreditation sought.

- [19] The Committee considered the application on 19 March 2014 and resolved not to approve it. Mr Sipeka, an official in the HPCSA' Secretariat, conveyed the Committee's decision to Netcare in a letter dated 5 May 2014, the relevant portions of which read as follows :

"Dear Mr Craig Grindell,

**APPLICATION FOR ACCREDITATION TO EMPLOY MEDICAL PRACTITIONERS:  
NETCARE HOSPITAL**

*We refer to the abovementioned matter and wish to advise that the Undesirable Business Practices Committee at its meeting held on 19 March 2014 noted your application requesting accreditation to employ radiotherapists and medical physicists who are both registered in terms of the Health Professions Act No. 54 of 1974.*

*The Committee upon deliberations resolved not to approve your application as employment of practitioners by corporate entities is against the HPCSA's ethical framework. Such approval is in certain instances only conferred for emergency purposes and upon thorough [scrutiny] of your matter the Committee did not establish any emergency care required[sic].*

*In the light of the aforesaid it is therefore recommended that Netcare hospital should engage practitioners as service providers wherein a service level agreement would be signed with Radiotherapists and Medical Physicists as opposed to an employer-employee relationship. Once a service level agreement is reached and signed, the Committee should be furnished with a copy thereof."*

- [20] Dissatisfied with the contents of the Committee's aforesaid letter, Netcare sought, initially without success, to obtain further information and reasons from the Committee for the refusal of the application. It was only when Netcare submitted a request for the said information in terms of the provisions of the Promotion of Access to Information Act, 2 of 2000 that the HPCSA provided the minutes of the Committee's meeting where the application was considered and refused.
- [21] The minutes do not reveal that the Committee, apart from considering the application itself, considered any extraneous evidence, nor that any of the

factual averments set out in the application were contested or placed in issue.

The following outcome is reflected in the minutes:

*"The Committee resolved not to approve Netcare Hospitals Limited application to employ Radiologists [sic] and Medical Physicists on the following basis:*

- (i) that Netcare Hospitals should regularize its policy relating to the employment of healthcare professionals to ensure that it is in line with the existing HPCSA ethical rules;*
- (ii) the Committee did not establish any emergency care required in the service provided by these medical practitioners and recommends that they should sign service level agreements with these medical practitioners;*
- (iii) these medical practitioners are able to work independently and still provide the required services to the hospital group."*

[22] Netcare, having been afforded an extension of time within which to lodge an appeal by the HPCSA, then duly noted an appeal against the decision handed down by the Committee.

[23] It is convenient to set out Netcare's grounds of appeal in full. These are the following:

*"1. the Committee and a fortiori, the First Respondent, erred in rejecting the appellant's application dated 31 January 2014 to employ radiotherapists and medical physicists ("the application");*

*2. the Committee and a fortiori, the First Respondent, erred in holding that the clause 2.2.2 of the provisions of its Policy Document on Undesirable Business Practices ("the UBP Policy") was only applicable in cases of emergency;*

3. *the Committee and a fortiori, the First Respondent, erred in concluding that the appellant's application is against the first respondent's ethical framework;*

4. *the Committee and a fortiori, the First Respondent erred in applying its UBP restrictively, alternatively, erred in failing to take into account all the considerations contained in its UBP Policy when making the decision, alternatively and in so far as such considerations were taken into account, erred in concluding that appellant's application would be in contravention thereof;*

5. *the Committee and a fortiori, the First Respondent, erred in finding that the radiotherapists and the medical physicists sought to be employed by the appellant are able to work independently;*

6. *the Committee and a fortiori, the First Respondent, erred in determining that service level agreements with radiotherapists and medical physicists was preferable to employment contracts with such radiotherapists and medical physicists."*

[24] At the hearing, we directed that the appeal and the review application could be argued simultaneously as the issues are interlinked. The two matters were then argued together. I set out hereunder that portion of the argument that deals with the appeal.

## **THE APPEAL**

[25] It is trite law that the appeal to the High Court created by section 20 of the Act is

*"...an appeal in the ordinary sense, ie a rehearing on the merits but limited to the evidence or information on which the decision under appeal was given, and in which the only determination is whether the decision was right or wrong."*

See the dictum of Van Heerden JA in *Health Professions Council of SA v De Bruin* [2004] 4 All SA 392 (SCA) par [23]. The learned Judge goes on to state that the Court hearing such an appeal should give due weight to the fact that the HPCSA, being mainly composed of members of the healthcare profession who know and appreciate the standards demanded of it, has a distinct advantage over a Court in the consideration and standards to be maintained by those practitioners. Van Heerden JA also held that a court of appeal should not hesitate to interfere with decisions of the HPCSA when interference was warranted by the principles governing appeals. Also see *Emergency Medical Supplies and Training CC (Trading as EMS) v Health Professions Council of SA and Another* [2013] 4 All SA 1 (SCA) paragraphs [8] and [11] where Mthiyane DP confirmed that the appeal created by Section 20 was an appeal in the ordinary sense.

- [26] Based on the abovementioned authorities, Mr Leech SC, for the appellant, correctly in my view, argued that, for purposes of this appeal, the merits of Netcare's case must be decided on the basis of the appeal record and the information that was before the Committee when it took its decision. There is no evidence that any information, other than that contained in Netcare's application, was placed before the Committee. Nor does it appear that the veracity of Netcare's information was ever challenged. It is therefore fair to assume that the Committee accepted that information to be correct.
- [27] Given that the appeal created by section 20 of the Act is an appeal in the ordinary sense, I must now consider the grounds advanced by Netcare on the merits.

## **THE MERITS**

[28] The main issue for consideration is whether the Committee, having regard to the information before it, the provisions of paragraph 2.2.2 of the Policy Document, the relevant statutes and the provisions of the Constitution, was correct in denying Netcare accreditation to employ radiotherapists and medical physicists at its oncology centres.

[29] I have already set out in paragraph 18 above Netcare's motivation to the Committee for it to be granted the requisite accreditation.

[30] Despite the fact that, *prima facie*, the application appeared to comply with the Ethical Rules and the criterion set out in the Policy Document, save for the statement that private hospitals should not be allowed to employ practitioners because of their profit motive<sup>3</sup>, the Committee turned the application down for the reasons set out in paragraphs 19 and 21 above. It is worth noting that it is not clear from the record whether the reasons set out in the letter quoted in paragraph 19 above, which go beyond what is stated in the minutes of the Committee's meeting, are the reasons that motivated the Committee's decision or whether they are merely the opinion of Mr Sipeka, the author of the letter.

[31] Mr Leech SC contends that the Committee misdirected itself on the nature of the discretion that it was called upon to exercise and urges us to set the Committee's decision aside and to consider the matter on its merits. He argues that:

---

<sup>3</sup> See criterion 2 in paragraph 14 above.

31.1 With respect to the first reason given by the Committee for rejecting the application, namely that Netcare should regularise its policies with regard to the employment of healthcare practitioners and bring those policies in line with the HPCSA's ethical rules, the Netcare application was itself one in terms of which it sought, amongst other things, to align its policies with the Ethical Rules and the Policy Document in respect of its employment of registered radiotherapists and medical physicists. Consequently, so the argument continues, to the extent that the Committee suggests that is what Netcare should do, that reason is illogical and amounts to a *non sequitur*,

31.2 In this case, the criterion of "emergency care" is extraneous to the discretionary elements set out in the Policy Document and that the Committee mistakenly elevated that criterion to an absolute and a determinative requirement;

31.3 The issue of whether or not medical physicists and radiotherapists could work independently of Netcare and still provide the service was irrelevant to the criteria set out in paragraph 2.2.2 of the Policy Document. What the Committee had to determine, so the argument continued, was whether or not there was any reason that prevented those practitioners from being employed by Netcare and not whether they should be required to work independently from Netcare.

[32] A careful reading of paragraph 2.2.2 of the Policy Document gives the impression that the Committee is required to weigh a number of factors to decide whether an application should be approved. I agree with Mr Leech SC

that the Policy Document is not a checklist. It is merely a guide to the Committee on the exercise of its discretion. The drafters of the Policy Document, in my view, could not have contemplated that the criteria in paragraph 2.2.2 are, in and of themselves, decisive.

[33] The respondents have not challenged the contents of the Appeal Record as being deficient or on the basis that the Appeal Record has omitted information or the documentation that served before the Committee. Their response to Netcare's contentions is simply that the Committee has been granted a wide discretion in reaching its decisions and, because the appellant has failed to prove that the Committee's decision was either capricious, biased, was based on a wrong principle or was taken without substantial reasons, this Court cannot, on appeal, interfere with the decision. In support of this stance, the respondents rely on the dictum of Cloete JA in *Naylor and Another v Jansen* 2007 (1) SA 16 (SCA) at 23 G and 24 B.

[34] I am not convinced that *Naylor* is of assistance to the respondents in this matter. *Naylor* deals with a discretion in the narrow or strict sense whilst in the present case the discretion which has to be exercised, as I will show hereunder, is a broad one, where we are at liberty to decide the matter on our own view of the merits as gleaned from the facts contained in the record.

[35] The difference between a narrow and broad discretion was dealt with by Brand JA in *MTN Service Provider (PTY) LTD v AFRO Call (PTY) LTD* 2007 (6) SA 620 at 623 E-H. The learned Judge referred to the case of *Media Workers Association of South Africa and Others v Press Corporation of South Africa Ltd ("Perskor")* 1992 (4) SA 791 (A) at 796 H-I and 800 E-G where



Grosskopf JA arrived at the conclusion that the term “discretion” has more than one meaning. Brand JA proceeded to explain the conclusion as follows;

*“On a proper analysis of earlier case, he [Grosskopf JA] said, the restraint on an appellate Court’s powers of interference only applies to a discretion in the strict or narrow sense and not to a ‘discretion’ in the broad sense, also described as a ‘discretion loosely so called’. A discretion in the strict sense, Grosskopf JA explained, involves a choice between different but equally admissible alternatives, while a ‘discretion’ in the broad sense – or loosely so called – means no more than is a mandate to have regard to a number of disparate and incommensurable features in arriving at a conclusion. When used in the broad sense, Grosskopf JA found, there is no reason why the appellate court should not exercise its own discretion by deciding the matter according to its own view of the merits. It is only in regard to discretion in the strict sense that the appellate court’s powers of interference are to be circumscribed.”*

[36] A careful reading of the second paragraph of Mr Sipeka’s letter to Netcare’s Mr Craig Grindell (referred to in paragraph 19 above) and the second paragraph of the minutes (referred to in paragraph 21 above) leads to a conclusion that one of the reasons for turning down Netcare might not have been the merits of its application but rather HPCSA’s policy not to accredit private hospitals because they operate for profit.

[37] Mr Leech SC further contended that this stance of the respondents, with regard to private hospitals, is difficult to reconcile with its position relative to registered healthcare practitioners who carry on private practices. These

practitioners are entitled to employ other healthcare professionals yet in both instances the profit motive is present. I agree.

[38] A reason for this stance might be that, if an employer is also a practitioner registered with the HPCSA, that employer would be subject to its Ethical Rules and jurisdiction. That would not be the case with a private hospital. Even if that was so, in the light of all the facts in this case, that would not have been a sufficient justification to reject the Netcare application.

[39] The Committee's stance with respect to private hospitals and practitioners in private practice, given that both are in business to make a profit, defies logic. The criterion that private hospitals should not employ practitioners because of their profit motive, save were the practitioners are employed to undertake emergency services, is possibly unconstitutional as it unfairly discriminates against private hospitals merely because they are profit driven organisations. Yet practitioners in private practise, who are also profit driven, are allowed to employ other healthcare professionals registered with the HPCSA. I doubt whether it could ever have been the Legislature's intention to clothe the HPCSA with the power to deny private hospitals the right to employ practitioners such as medical physicists and radiotherapists merely because such hospitals are profit driven.

[40] The second reason for the refusal, namely, that the application was not intended to provide emergency services, is not a requirement specified in the

Policy Document or in the Act. The Committee apparently erred in concluding that such approval or accreditation is only given to private hospitals when the application is for the provision of emergency care. The Committee failed to give due weight to the other criteria set out in the Policy Document referred to in paragraph 14 above in reaching its decision.

[41] In arriving at the third reason for refusing the application, namely that these practitioners are able to practise independently, it would appear that the Committee failed to consider the information regarding the high costs of an independent oncology practice referred to in paragraph 18.7 above.

Moreover, it appears that the Committee also failed to consider Netcare's submissions on how the employment arrangements with practitioners in its oncology centres do not infringe the Ethical Rules and that they benefit both practitioners and patients.

[42] I am satisfied that Netcare's application for accreditation, the salient features of which are set out in paragraph 18 above, contains sufficient information to dispel any notion that the employment of medical physicists and radiotherapists in circumstances set forth in the Netcare application could harm patients or expose them to increased costs or overtreatment. Also, on the facts set out in the record, there is no evidence that the practitioners' clinical independence, ethical or professional responsibilities and duties would be compromised by their employment with Netcare. On the contrary, the medical physicists and radiotherapists already employed by Netcare, some of whom have enjoyed employment benefits and job security for very long periods, would be jeopardized as Netcare would have to dismiss them in the

event that it is unsuccessful in having the HPCSA and the Committee's decision overturned.

- [43] It is worth noting that, even if Netcare is accredited to employ medical physicists and radiotherapists, the terms of their employment will, according to Rule 18 of the Ethical Rules, still have to be in accordance with a written contract drawn up on a basis which is in the interests of the public and the profession. The HPCSA is entitled to inspect the contracts to make sure that the interests of the public and the profession are not jeopardized.
- [44] When the material facts which served before the Committee are viewed against the criteria contained in paragraph 2.2.2 of the Policy Document, it is hard not to conclude that the Committee misdirected itself by giving undue weight to the fact that there is no emergency care involved in the Netcare application, and requiring that medical physicists and radiotherapists should work independently for Netcare, disregarding the benefits of direct employment and the fact that such employment would not, on the facts before the Committee, affect the treatment protocol or jeopardize the interests of any patient.
- [45] The Committee and *a fortiori* the HPCSA erred in concluding that Netcare's employment policies were against the Ethical Rules. The Committee and *a fortiori* the HPCSA also erred in applying the provisions of the Policy Document restrictively. The Committee should have taken into account and weighed all the criteria contained in that document when making its decision.
- [46] In the light of the above, I find that the HPCSA and the Committee misdirected themselves as to the nature of the discretion the Committee was called on to

exercise in that the Committee gave unwarranted weight to some facts and ignored others.

[47] I also find that we are in as good a position as the Committee to judge the facts as the Committee decided the Netcare application on paper. As I disagree with the Committee and *a fortiori* HPCSA's decision on the merits of the Netcare application, I am of the view, based on *Perskor supra*, par [35] above, that our discretion is broad because it does not involve a choice between different permissible alternatives, but rather a judgment to be made in the light of all the relevant circumstances. We are therefore entitled to interfere with the Committee's decision to turn the Netcare application down.

[48] Given my conclusion on the merits of the appeal, I find that the necessity to rule on the review application has become redundant. For the guidance of the Taxing Master, I record that equal time was spent during the hearing of the matter on hearing argument on the appeal and on hearing argument on the review application.

[49] In the event, I propose the following order:

1. The appeal is upheld. The first respondent is ordered to pay the costs of the appeal including the costs consequent on the employ of two counsel.
2. The decision of the Undesirable Business Practices Committee and *a fortiori* of the Health Professions Council of South Africa to reject the Appellant's application dated 31 January 2014 to employ medical physicists and radiotherapists, is set aside. In its place there is substituted:

“Netcare Hospitals (Proprietary) Limited is hereby accredited to employ medical physicists and radiotherapists registered with the Health Professions Council of South Africa at those of its hospitals that provide oncology health care services, in accordance with employment contracts which comply with Rule 18 contained in the Schedule to the Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act, 56 of 1974.”

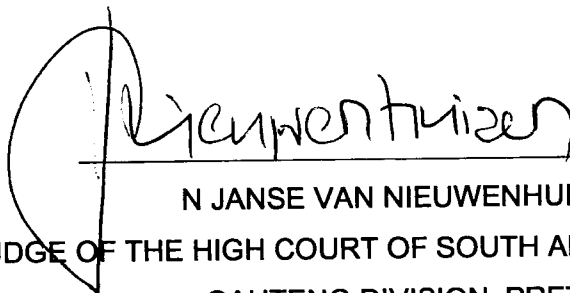
3. The review application, case no. 71745/2014, is removed from the roll.  
No order as to costs.



M.P. CANCA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA (ACTING)  
GAUTENG DIVISION, PRETORIA

I agree,



N JANSE VAN NIEUWENHUIZEN J  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Appearances:

For the Appellant/Applicants:

BE Leech SC and MA Chohan SC

Instructed by: Werksmans Attorneys, Sandton.

For the First and Second Respondents:

H.N Maenetja SC and K Mokotedi

Instructed by:

Gildenhuis Malatji Attorneys, Pretoria.

For the Third and Fourth Respondents:

The State Attorney, Pretoria