

Department of Mineral Resources

Unpacking Minimum standards of fitness

By Dr Dipalesa Mokoboto



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@DMR_SA



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Outline

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- Minimum standards of fitness
- Legislative framework to consider
- OMP considerations
- Medicolegal considerations
- Principlism
- Case law
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- Conclusion



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INTRODUCTION

- Drafted to assist OMPs -fitness to work
- Outlines common approaches
- Not meant to be prescriptive
- OMP allowed to introduce other approaches
- To be supported by evidence-based clinical trials/medical association
- OMP determines fitness to work
- Should be familiar with requirements of jobs



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CONSIDER OTHER LEGISLATIVE FRAMEWORK

The Mine Health and Safety Act 29 of 1996- further influenced by :

- Labour relations Act 66 of 1995-regulates fair dismissal of employees.
- Basic conditions of Employment Act 75 of 1997-conditions of all employees-particularly shifts and pregnant women)
- Employment equity Act -restrictive in terms of testing-(e.g. HIV tests prohibited unless justifiable by labour court)
- Q: Is it ethical to conduct CD4 test in lieu of HIV test???



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OMP CONSIDERATIONS WHEN DETERMINING FTW

- Risk management principles—consider work exposure
- Each case to be evaluated on its own merit- No two cases the same
- No blanket exclusions for employees with certain conditions.(DM)
- Consider specific risks for specific jobs- don't generalise(plant e.g.)
- Consider specifics of med. Condition and working environment
- Medical condition interpreted in functional terms and job requirements
- Medical ethics and relevant legislation incl. case law



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MEDICOLEGAL CONSIDERATIONS

- Medical ethics not separate from law ---intrinsically interwoven
- Ethical duty may also be a legal obligation
- Part & parcel of the traditional doctor-patient relationship
- Ethical obligations depicted in national & international codes(ICOH)
- Enforced by professional bodies(e.g. HPCSA booklet 1)
- Beauchamp-Childress model on principlism-prominent

PRINCIPLISM

1 Respect for autonomy-

- informed consent; confidentiality, truth telling

corresp to legal positions – the Constitution.

sections 10(dignity);12(2)(b) bodily intergrity;14 (privacy).

?? paternalistic

2. Beneficence (doing good);

protect and defend the rights of others—do we?

prevent harm from occurring to other-may lead to maleficence

help persons with disabilities- do we?



PRINCIPLISM

Non-maleficence

- doing no harm-
- Not depriving others the goods of life-

Justice

- Fair treatment of employees
- Respect for human rights
- Respect for morally accepted laws



RELEVANT CASE LAW

IMATU v city of cape town

- Applicant denied job as firefighter – IDDM
- OMP stated that applicant posed a safety risk to self and others
- Expert witness was sought- rxd applicant for 20years
- Fears of employer overcautious and unnecessarily restrictive
- Applicant last had hypo at 10years, after diagnosed
- Diabetics not invalids- should not be discriminated against
- NIDDM more hypo-less controlled and poorly managed
- Applicant was model diabetic px- well controlled



CASE LAW 1

IMATU v city of cape town

- An optimally controlled IDDM -less risk than
- An undiagnosed or poorly managed NIDDM
- Controlled diabetics seek dignity-capacity to function normally
- Modern pharmacol and techno makes this possible
- Blanket ban constituted unfair discrimination- CC Decision



CASE LAW2

McLean v
SASOL Mine
(Pty) LTD
Secunda
Colliery /:

- “40] for there to be true individualization, a close assessment should be made of the individual in question since even persons with the same disability vary markedly in how they personally function and cope with their affliction, or vary in the degree of impairment because of different stages of their infirmity.”



CASE LAW 3

CC judgment in Hoffmann v SA Airways (2000 ILJ 2357 (CC)) where the court confirmed:

- individualised assessment, rather than a blanket ban, should be followed
- In cases where the employer seeks to differentiate on health grounds
- in an employment policy or practice.



Case Studies

Relevant case studies
demonstrating case law

[case studies.docx](#)



TAKE HOME MESSAGE

1. Remember the Constitution- Bill of rights

- Of importance:
- Right to- dignity; cornerstone of our Constitution(J Ackerman)
- Right to equality; full and equal enjoyment of all rights
- Right to fair labour practice: no discrimination for certain conditions ; right to reasonable accommodation(

TAKE HOME MESSAGE

1. Remember case law

Consider cases discussed

Consider update on case law by Peter Strasheim

2. Remember RFA

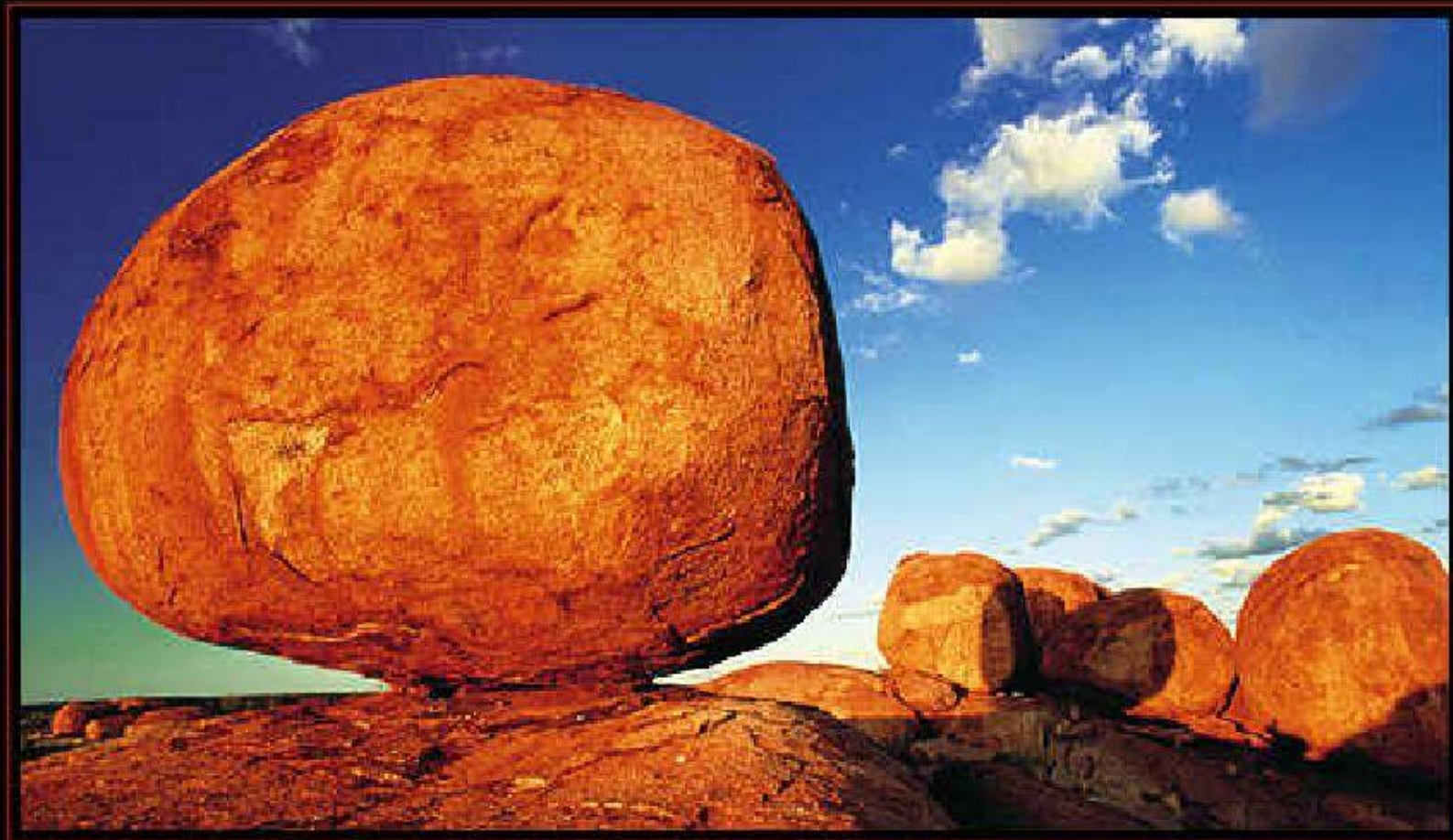
Do not abuse – e.g sending an employee who is still sick for RFA

3. Guideline not only tool to determine fitness

Consider other legislation and medical ethics

CONCLUSION

- Minimum standards of fitness guideline cant be used in isolation
- Need to revise the guideline
- Advance in medicine and technology to be considered



M·O·M·E·N·T·U·M

A LITTLE PUSH IN THE RIGHT DIRECTION
CAN MAKE A BIG DIFFERENCE.



Thank You!



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