

SAMLA-UCT PRACTICAL TRAINING WORKSHOPS IN MEDICO-LEGAL PRACTICE
Workshop 3 - RAF 4 Serious Injury Assessment (1 June, 13 July & 17 August 2019)

1) LEARNING OUTCOME STATEMENT

a) The goals of the workshop are : -

i) For medico-legal practitioners to gain an understanding of : -

- (1) The relevant legislative framework providing for assessment of injuries as serious or non-serious for purposes of compensation for general damages.
- (2) The ethical role of medical practitioners in writing serious injury reports as specified in the legislation, which includes the absence of any differentiation between general practitioners and specialists.
- (3) The ethical role of other health practitioners, for which no provision for writing serious injury reports is made in the legislation.
- (4) The ethical role and responsibilities of the Registrar of the HPCSA.
- (5) The ethical role and responsibilities of Appeal Tribunals.
- (6) Problems in the application of the serious injury assessment legislation.

ii) To train medico-legal practitioners to : -

- (1) Write RAF4 reports which include meaningful narrative tests that take the circumstances properly into account.
- (2) Evaluate RAF4 serious injury reports written by others.
- (3) Evaluate Appeal Tribunal findings and reasons.

iii) To formulate recommendations to the Registrar of the HPCSA, the Hon Minister of Transport, the Hon Minister of Health and the Law Reform Commission.

b) The training will be relevant to : -

i) Medical practitioners (general practitioners and specialists) who write, or wish to write, RAF4 serious injury reports, but who do not wish to write medicolegal reports or appear in Court as expert witnesses.

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- ii) Expert witnesses, including medical specialists, occupational therapists, speech therapists, clinical psychologists, neuropsychologists, educational psychologists and industrial psychologists.

- iii) Attorneys, advocates and judges.

- c) Special note. This workshop will not seek to replace or duplicate the training in WPI (whole person impairment) rating, according to the AMA guides 6th Edition, as provided in South Africa by the American Board of Independent Medical Examiners under the auspices of the RAF.

2) FRAMEWORK AND METHOD OF TRAINING DAY 1

- a) The training will consist of 2 full days for essential knowledge acquisition, to be conducted in a series of training sessions by members of the expert panel, nl
 - i) Prof. Magda Slabbert (Professor of Law UNISA); Ms. Leigh de Souza (Attorney); Dr. Herman Edeling (Neurosurgeon); Dr. Hans Enslin (Orthopaedic Surgeon); Dr Evan Williams (Orthopaedic Surgeon); Dr Gavin Fredericks (GP – RAF4 Practitioner); Mr Trevor Reynolds (Clinical/Neuro Psychologist); Ms Pip Jackson (Physiotherapist); Dr Lee Randall (Occupational Therapist); Ms Anoett Rossouw (Occupational Therapist); Mr Jimmy Kyriacou (Philosophy/Jurisprudence Lecturer).

- b) Each training session will consist of a formal lecture, as well as comments by other members of the expert panel and questions/answers/comments by course participants in all venues. Where relevant, lectures will be supported by presentation of case reports, appeal tribunal minutes and/or review applications.

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c) The topics of the lectures will be : -

- i) Introduction – Context and Purpose of RAF4 Serious Injury Assessment – Need for Multidisciplinary Participation – Overview of Training Workshop [Dr. Herman Edeling]. ½ hour
- ii) Legal Framework of RAF4 Serious Injury Assessment – Road Accident Fund Amendment Act 19 of 2005 – Road Accident Fund Regulations, 2008 GG 31249 – Removal of the Right of Access to Courts – Administrative Authority of Appeal Tribunals – Duties of the RAF and its Agents – Duties of Plaintiff Legal Representatives – Duties of the HPCSA – Duties of Medical Practitioners who Serve on Appeal Tribunals. [Prof. Magda Slabbert]. 1½ hours
- iii) Strengths and Shortcomings of WPI Rating; in General and in the South African Context. [Dr Herman Edeling]. ½ hour
- iv) Experience and Perspective of a General Practitioner and Appeal Tribunal Member – Comments on RAF4 Form – Pros & Cons of WPI Rating – Need for a Narrative Test – How to Write a Standalone RAF4 Report. [Dr Gavin Fredericks]. 1½ hours
- v) Psychological damages – Role of Medico-Legal Expert Psychologists. [Mr Trevor Reynolds]. 1 hour
- vi) Attorney's Experience in Practice – Effect of RAF4 Legislation on Case Management and Litigation – Quality of RAF4 Reports – Function of Appeal Tribunals – Review Applications. [Ms. Leigh de Souza]. 1½ hours

3) FIRST SYNDICATE ASSIGNMENT

- a) Each participant will be required to complete an assignment and attend a syndicate meeting to discuss the assignments before the 2nd day of the workshop. Procedures for syndicate work, meetings, grading rubrics, comments and evaluations, as well as mentoring, revision and appeals where necessary will be the same as those established in workshop one on traumatic brain injury (see workshop one outcome-framework-assignment document).
- b) Participants will be provided with a number of questions, each of which will be pertinent to a core learning objectives of the workshop. Participants will be required to write a brief but meaningful narrative answer to each question.
- c) The requirements for a “complete” evaluation will require demonstration of having paid attention during the preceding workshop day, attendance at and meaningful participation in the syndicate meeting, and completion of “satisfactory” narrative answers. To qualify as “satisfactory”, the narrative answers should reflect that the participant has applied his or her mind to each question, and should reflect a logical process of reasoning based in fact.
- d) The outcome of each syndicate meeting will be the compilation of a final syndicate report with agreed narrative answers to the questions.

4) FRAMEWORK AND METHOD OF TRAINING DAY 2

- a) Each training session will consist of a formal lecture, as well as comments by other members of the expert panel and questions/answers/comments by course participants in all venues. Where relevant, lectures will be supported by presentation of case reports and/or appeal tribunal minutes.

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- b) The topics of the lectures and discussions will be : -
- i) Report back from syndicates. ½ hour.
 - ii) Experience and Perspective of an Orthopaedic Surgeon, Expert Witness and Appeal Tribunal Chairperson – Comments on RAF4 Form – Comments on WPI Rating of Musculo-Skeletal Impairments – Need for a Narrative Test – How to Write an RAF4 Report as a Supplement to a Medico-Legal Report. [Dr. Evan Williams]. 2 hours.
 - iii) What does the Narrative Test really mean – How to Write a Meaningful Narrative Test Report – Incorporating Findings of Experts in Other Disciplines. [Dr Herman Edeling]. 1½ hours
 - iv) Disability Assessment – The meaning of “taking circumstances into account”. Disability Assessment as opposed to Impairment Rating. [Ms Anoett Rossouw]. 1 hour.
 - v) Losses of Work Capacity, Amenities and Enjoyment of Life – Role of Medico-Legal Expert Physiotherapists and Occupational Therapists. [Ms Pip Jackson and Dr Lee Randall]. 1 hour.
 - vi) Report back from syndicates. 1 hour.

5) SECOND SYNDICATE ASSIGNMENT

- a) Each participant will be required to complete an assignment and attend a syndicate meeting to discuss the assignments before the 3rd, concluding, day of the workshop. Procedures for syndicate work, meetings, grading rubrics, comments and evaluations, as well as mentoring, revision and appeals where necessary will be the same as those established in workshop one on traumatic brain injury (see workshop one outcome-framework-assignment document).

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- b) Participants will be provided with 2 fact sheets (containing actual facts pertaining to anonymized real cases), and will be required to write an RAF4 serious injury assessment report specific to each case. [NOTE : For the purpose of these assignments participants will not be required to provide WPI impairment ratings.]
- c) The requirements for a “complete” evaluation will require demonstration of having paid attention during the preceding workshop day, attendance at and meaningful participation in the syndicate meeting, and completion of “satisfactory” RAF4 serious injury assessment reports.
- d) To qualify as “satisfactory”, the reports should reflect that the participant has applied his or her mind to the set of facts, should reflect a logical process of reasoning based in fact, and should contain a meaningful narrative test report that complies with the guidelines and takes the circumstances of the injured person properly into account.
- e) The outcome of each syndicate meeting will be the compilation of final syndicate reports with agreed narrative test reports.

6) FRAMEWORK AND METHOD OF TRAINING DAY 3

- a) The third day of the workshop, 17 August 2019, will start with a session of report back from syndicates. ½ hour
- b) This will be followed by the 2 golden thread lectures, nl
 - i) Postmodernism in Medico-Legal Practice. [Mr Jimmy Kyriacou]. 1 hour
 - ii) Observational/Research Scientific Reasoning. [Mr Jimmy Kyriacou]. 1 hour

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- c) After tea - How to be a Credible and Valuable Expert – Proposed Criteria for Full Payment, Partial Payment or Non-Payment of your Account – Summation by an Orthopaedic Surgeon, Expert Witness and Appeal Tribunal Member [Dr. Hans Enslin]. 1½ hours

- d) After lunch - These lectures will be followed by report back from the syndicate leaders, comments on the assignments and syndicate reports by members of the expert panel, and interactive general discussion on the subject matter of the workshop. To the extent permitted by time the training will include presentation and discussion of illustrative case reports, appeal tribunal minutes and review applications. 1 hour

- e) Then a lecture on Special Considerations – Including MMI (maximum medical improvement) – Anticipated Future Improvement or Deterioration – Anticipated Future Treatment – Apportionment of Damages as opposed to Pathological Apportionment. [Dr Herman Edeling]. 1 hour

- f) Concluding Event of the Workshop. Can Appeal Tribunals be Useful, Just and Equitable – If so How? Formulation of Recommendations to Authorities (i.e. Appeal Tribunals, HPCSA, the Hon Minister of Transport, the Hon Minister of Health and the Law Reform Commission) to Improve the Current System. [Expert Panel with Input From Participants]. 1 hour

7) REFERENCES

- a) The lectures of Prof Slabbert and Dr Edeling will be based on their prior publications, nl : -
 - i) The Road Accident Fund and Serious Injuries: the Narrative Test – M Slabbert, HJ Edeling – PER 2012 VOLUME 15 No 2.

- ii) HPCSA Serious Injury Narrative Test guideline - HJ Edeling, NB Mabuya, P Engelbrecht, KD Rosman, DA Birrell – SAMJ 2013;103(10):763-766.
 - iii) Serious Injury Claims Rejected By The Road Accident Fund: The Appeal Process – M Slabbert, HJ Edeling – OBITER 2016;Volume 37 Issue 1.
- b) In addition the training will refer to the following : -
- i) Road Accident Fund Amendment Act 19 of 2005.
 - ii) Road Accident Fund Regulations, 2008. GG 31249.
 - iii) AMA Guides to the Evaluation of Permanent Impairment, 6th Edition.
 - iv) Road Accident Fund Amendment Regulations, 2013. GG 36452 (List of Non-Serious Injuries).