



SECTION 59 INVESTIGATION
Day 7
Meeting Minutes

Date	Wednesday, 21 August 2019
Time	10:00
Location	420 Witch-Hazel, Block A, Eco Glades
Chairman	Adv. T. Ngcukaitobi

Agenda Subject	Discussion
I. Call to order	Chair Adv. Ngcukaitobi called the meeting to order at 10:00 am.
II. Witness swore under oath	Chair called the motion to have Lawyers from Elsabe Klinck & Associates take an oath do their presentation on the cases and findings relating to section 59. The first person sworn in from this team of Lawyers was Elsabe Klinck, followed by Patricia Matseke, third person sworn in was Yvonne Naidoo and lastly Abby Iheanyi
III. Noting of submissions by Elsabe Klinck & Associates	The Team of lawyers provided the Secretariat, Advocates Ngcukaitobe, Williams and Hassim a file of evidence collected from section 59 cases investigated by the Association and a PowerPoint presentation.
IV. Elsabe Klinck	The presentation of findings was given by Elsabe Klinck, and noted that her associates will be commenting on different section 59 cases of racial profiling and withholding of payments by medical schemes , which have been investigated by the Association.
VI. Background of Elizabeth Klinck and Associates	Elsabe Klinck explained that they are a group of consultants with Legal background, and two members of the team have health sector background. The two members mentioned could not be available for the hearing as they are in Bloemfontein.
VII. Demographics of the Association' s clientele	Elsabe explained that their clients come from all groups, namely step down's, rehabilitation centres, small practitioners,etc.
VIII. The PowerPoint presentation	Indirect discrimination Elsabe made a comment that Physicians practice differently because of their geographical locations. Advocate Ngcukaitobi asked a question whether there is a perception that Dr's in KZN operate differently from the norm. Elsabe answered that, there may be a perception that they are generous with coding- claiming from the medical aid , but there is no hard evidence that proves malpractice or outlier behavior.

	<p>Advocate Ngcukatoibi further asked the her that who is is that is making these allegations, or who exactly is saying that KZN has a lot of doctors with outlier behavior .</p> <p>Elsabe replied that it comes from billing software companies, and health marketing companies. Advocate Ngcukatoibi then asked her to provide a list of these billing companies to the council.</p> <p>Advocate Williams asked Elsabe where these companies say the diversity comes from.</p> <p>In response to this, Elsabe said that it is when they do on-site visits to practitioners.</p>
	<p><u>Fraud</u> There has been a minimum of cases of fraud from the cases the team has worked on.</p>
	<p><u>Misconduct</u></p> <p>Elsabe mentioned that there are a lot of bulk dispute cases. Some cases do not make a threshold of misconduct. There are cases where an acknowledgement of debt had been signed because the practitioner felt under pressure from the allegations made by the scheme. And there are those cases where the practitioner did make an error.</p> <p>Advocate Williams asked if there are statistics of who comes to the Association to complain about racial profiling. Elsabe stated that she would provide the information.</p> <p><u>Suspended payments by schemes for alleged misconduct.</u></p> <p>The were examples of these cases that were presented to the panel as evidence of section 59 with held payments by schemes. Discovery medical aid, had a number of disputes against them for withholding payments without providing reason to the practitioner, or giving them the chance for the practitioner to respond to with feedback. When they give the practitioner notice of the audit requirements for their alleged accusation/outlier behavior, the payments are already suspended or withheld.</p> <p>Adv Ngcukaitobi asked whether other schemes were doing the same thing.</p> <p>Elsabe replied that there are similarities of that behavior from other medical aid schemes.</p> <p>Elsabe also mentioned that in some of the cases the practitioner is immediately suspended and placed on direct payment.</p> <p>Adv. Ngcukaitobi asked what the Dr's perspective is as it is understood that it gets difficult to redeem the money paid directly to patients?.</p> <p>Elsabe replied and said that there is really reliance to retain money from patients,</p>

	<p>which frustrates the practitioners and the law does not guarantee the refunding.</p> <p>Adv. Williams asked if it was correct that the CMS does not have a doctrine of precedence and does not publish the appeal's ruling.</p> <p>Elsabe confirmed that it was true.</p> <p>Adv. Ngcukaitobi then asked if there is compliance with CMS rullings and whether they get enforced or not.</p> <p>Elsabe said that the CMS rullings are not always complied with and have not yet been enforced.</p> <p>Adv. Ngcukaitobi asked who exactly it was that is not complying with the CMS rulings?</p> <p>In response to this, Elsabe stated that it is the funders, like Gems and Discovery who actually resisted the rulings and wanted to approach the courts.</p> <p>Adv. Ngcukaitobi asked Elsabe to explain how the rulings had been enforced in the past.</p> <p>She then replied and stated that she was not clear on that and that the CMS would be in a better position to answer that.</p> <p>Adv. Williams asked if there was ever an instance where the CMS had placed a hold on sec 59 rulings.</p> <p>Elsabe replied stating that there is an escalation that is currently pending.</p>
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	<p><u>Information preparation Audi Alterum Partern rule.</u></p> <p>Elsabe said that there are inconsistencies with the time lines given to practitioners for audit requirements by the schemes , these vary between 14, 21& 30 days with no reasonable details on the time lines.</p> <p>Abby Iheanyi stated that there is no consistency from the schemes when they suspend payments.</p> <p>Patricia Matseke made her statement referring to case of a complaint against Discovery health that suspended payments. She gave the details of the case stating that the practitioner was not given reasons as to why Discovery health requested patients files dating back to 3yrs. In this instance the Dr refused to provide the patient files without reason from the scheme and without consent from the patients. She further explained that he(the doctor) felt that as a psychiatrist his patients are vulnerable and did not want to breach the Dr/ Patient confidentiality.</p> <p>Adv. Ngcukaitobi asked what was the reason for Doctors' reluctance to provide the required information.</p> <p>Patricia replied that Dr's want to know the details and relevance of the alleged misconduct to the client files, as most psychiatric patients give confidential information to the Dr with trust and confidence.</p> <p>Elsabe mentioned that some cases practitioners do not complain and opt to just sign an AOD because they are scared of the medical scheme.</p> <p>Adv. Ngcukaitobi asked why the practitioners are scared of the schemes?</p> <p>Elsabe said it is fear that the scheme could retaliate if there is a complaint made against them, or they wont get paid if they don't comply,or they could be flagged for future audits by the schemes, or have unilateral suspension of payment s by the schemes. Some practitioners fear possible insurance ramifications.</p>
	<p><u>What exactly is the problem?</u></p> <p>_Medical scheme trap Doctors, by sending out probes to their practices during their busiest times. They then use the recordings made by these probes against the Dr and corner them to exploit money from them. Examples of these probes were presented to the commission by the team, where in some instances the Dr's were pressured into issuing out false sick note/ doctor's certificates and the Dr would then be asked by the scheme to quantify losses to the scheme for a three year period.</p> <p>Adv. Ngcukaitobi asked what the the scheme's response was to tricking Dr's from the meetings held in such cases.</p> <p>Yvonne Naidoo mentioned that the schemes usually say that they were tipped off,but they have never been able to provide details of these so called tip offs.</p> <p>Adv. Ngcukaitobi further asked what the probes get as payment for probing and</p>

	<p>risking their lives.</p> <p>Yvonne said that there was no clarification on this, but had picked up that these probes work for Discovery health and are well trained.</p> <p>Adv. Hassim asked if in instances where the schemes ask for three years records, it would be regarding the sick notes/ doctor's certificate.</p> <p>Yvonne replied saying that it is usually a full audit trail of all claims. And that the Dr would be required to pay 10% of the total of all those claims, including the error in question.</p> <p>Adv. Williams asked that if the doctor charges patients for consulting and not for the issuing of the sick notes, then what is the relevance of the claims on the sick notes?</p> <p>In response to this, Yvonne stated that medical scheme's argument is that a (probe)patient confirmed to the Dr that they are not sick.</p> <p>Adv. Ngcukaitobi asked how the probe gets the camera into the practice to record the occurrence..</p> <p>Yvonne said that the probes go with their phones and distract the Dr with small talk and secretly record as if they are playing with the phone.</p> <p>Adv. Hassim asked what the race of the Doctors in these cases was.</p> <p>Yvonne together with the whole team of consultants confirmed that the doctors were all black.</p>
	<p><u>Conclusion</u></p> <p>Elsabe stated the following:</p> <ul style="list-style-type: none"> ➤ Specific issues need to be given reasons why a practitioner is alleged an outlier. ➤ A blanket consent cannot be signed by patients as it is unconstitutional as confidentiality could be breached. ➤ Clarity is needed as to who makes the final decision from the scheme. ➤ There must be a distinction between an analyst and an investigator. ➤ The abuse of the HPCSA ethical rules booklet by schemes must be stopped. ➤ Peer review should be implemented ➤ The decision-makers' and adjudicators' qualifications should be considered.
Other business	<u>None</u>

Adjournment: Adjourned at 12:32 pm to return at 13:00

SECTION 59 INVESTIGATION
Day 7 (Part 2/ Session 2)
Meeting Minutes

Date	Wednesday, 21 August 2019
Time	13:09
Location	420 Witch-Hazel, Block A, Eco Glades
Chairman	Adv. T. Ngcukaitobi

Agenda Subject	Discussion
I. Call to order	Chair Adv. Ngcukaitobi called the meeting to order at 13.09 pm.
II. Witness swore under oath	Chair called the motion to have Casper Venter take an oath and to do the presentation.
III. Noting of submissions by Healthman	The Team from Health man provided the Secretariat, Advocates Ngcukaitobi, Williams and Hassim PowerPoint slides of the presentation
IV. Background	Casper Venter gave an explanation of which group and affiliations make up the Healthman group.
V. Demographics of their clientele	Casper mentioned that the cases they investigated are from all racial groups , (black, Indian, colored and white practitioners)however the statistics of their membership shows that the majority of their membership is white practitioners.
VI. About Healthman	They assist clients in forensic reviews against medical aids, administrators, and the HPCSA.
VII. Historic practices	<p>Coding</p> <p>Casper Venter stated that the previous forensic reviews have been aggressive and confrontational.Dr's previously did not come out to ask for assistance. However things are now changing as they see a Dr's coming to get assistance with allegations.</p> <p>Furthermore, Casper noted that the coding from 2006 no longer is applicable because SAMA has updated the handbook for coding, there is a 2019 edition, and it gets updated every 2 or 3 years. Coding should then not be cumbersome or confusing. He noted that coding is the reason for most of their forensic reviews as it brings a lot of contention. He also noted that there is always consensus whenever there are changes that need to be made, the schemes are always on the loop and in the know and in agreement if such changes need to be made.</p>

VIII. X. Other items	<p>Advocate Williams asked Casper to provide details of who comes to seek assistance, according to discipline.</p> <p>Errors: Casper explained that it is when a practitioner has made an error that triggers a full audit to be conducted.</p> <p>Advocate Hassim asked how long the whole investigation process takes Casper responded stating that it can take 3-4 days, in some cases a month or up to 6 months depending on the availability of information and complexity of each case.</p> <p>Casper noted that time-based coding practice is an issue that has come up in cases as it is different from that of the schemes'. Doctors in various geographical locations and with varied patient numbers, have caused or triggered allegations and suspicions of deviating from the norm, which Healthman has successfully investigated.</p> <p>Generalization of coding Casper further noted that the generalization of coding by schemes has caused disputes as different physicians in their respective speciality can use or repeat codes depending on the type of patients they treat. He then stated that medical schemes should further investigate the doctors who are alleged to be deviating from the norm comparing them to their peers, before suspension of payment. Furthermore, he stated that per line item coding is the appropriate way and not generalization. Schemes should not use averages but factual and actual evidence to substantiate their claims for recovery.</p>
	<p>Conclusion Medical schemes need to engage doctors and get adequate information on the alleged misconduct.</p>
Other business	None

Adjournment: Adjourned at 14:58 pm to return at 15:10

SECTION 59 INVESTIGATION

**Day 7 (Part 3/Session 3)
Meeting Minutes**

Date	Wednesday, 21 August 2019
Time	15:12 pm
Location	420 Witch-Hazel, Block A, Eco Glades
Chairman	Adv. T. Ngcukaitobi

Agenda Subject	Discussion
I. Call to order	Chair Adv. Ngcukaitobi called the meeting to order at 15:12pm.
II. Witness swore under oath	Chair called the motion to have Doctors Munisi, Thokoane, Talatala and Maelane of SMDP to take an oath and to do their presentation on the cases and findings relating to section 59 at 15:15pm .
III. Information on presentation given to the commission.	The Team from SMDP provided the Secretariat, Advocates Ngcukaitobi, Williams and Hassim a file of findings and exhibit from section 59 cases. They did not provide a PowerPoint presentation.
IV. Membership	Dr Maelane explained how their membership is made up of, they have different members of practitioners who operate from townships, rural areas and informal settlements.
VI. Practicing and medicine dispensing	Dr Maelane declared that their members dispense medicine legally from their practices, due to the geographical location of their practices which are usually far from reach to pharmacies for their patients. He further emphasized that they have been dispensing medicine way before the levies were introduced in 1989, and before the general service tax was introduced
VII. Demographics of their clientele	Dr Maelane said that their members are from all race groups , (black, Indian, colored and white practitioners) However only two of 1663 members are white.
VIII. Socioeconomic factors	Dr Maelane said that the patients who are treated by their members are mainly from lower options on the medical aid schemes.
IX. What sustains SMDP members	Dr Maelane explained that the Dr's are largely dependent on medical claims, and black patients with medical coverage is only at 9% of the population from these previously disadvantaged areas.
X. Other issues facing their members	<ul style="list-style-type: none"> V. Inciting Dr's. VI. Withholding claims by schemes. VII. Payments issued to patients and not the Doctors by medical schemes. VIII. Pressure on doctors to sign acknowledgement of debt for alleged defrauded amounts by the doctors from the medical scheme for a 3 yr total period. IX. Medical schemes apply section 59 at the disadvantage of doctors
	<p><u>Misapplications</u></p> <p>Dr Maelane said that medical schemes set their own rules on how accounts should be rendered and paid for. He further commented on forensic units use desktop evaluations and data that is not correctly updated and they don't provide proof of alleged</p>

	<p>misconduct for the doctors. Dr Maelane said that administrators withhold payments without getting proper proof of the alleged misconduct from the doctors.</p> <p>Dr Maelane said that the amounts recouped are never for the benefit of the patients, but only for the forensic unit.</p> <p>Dr Maelane mentioned that most alleged practitioners who want to represent themselves usually are avoiding embarrassment.</p> <p>What causes allegations: Dr Maelane said that some cases practitioners are accused of misconduct where they have claimed for original medicine, but generics have been dispensed. Over servicing- out of normal working hours from peers. Practicing without warrant</p>
	<p>Proposal SMDP proposes the following:</p> <ol style="list-style-type: none"> 1. 90 day should be given to doctors to provide information to the scheme . 2. Medical schemes should also adhere to the same time frame of 90 days to finalize on findings. 3. Only the previous 90 days claims should be requested from the doctors by schemes, and not irrelevant information dating 3 yrs back. 4. Pricing and coding guidance must given to schemes and communicated to doctors by the schemes. 5. If there is indeed fraud then the recourse should be taken to court. <p>Advocate Ngcukaitobi, questioned the practicality of this suggestion.</p> <p>Adv Ngcukaitobi suggested that there should be robust measures at hand as a proactive tool.</p> <ol style="list-style-type: none"> 6. Dr Maelane proposed that there should be a variety of people who will form a panel of investigation for medical Schemes and health providers and members of society should be included. 7. Data should be made available to the doctor by the schemes. 8. The recouped amounts should be regulated and used back for the benefit of the patient.
	<p>Exhibits of complaints were given by Dr Thokoane against Medshield with error of address and accusations of being employed by the state. The recourse of this case, was that the payments which have been withheld were finally released, after the Dr lodged a complaint of his black listing and suspended payments by Medshield.</p>
Other business	Section 59 has loopholes that prove racial profiling by schemes.

Adjournment: Adjourned at 16:52 pm, next sitting on Friday 10: 00 am