

THE COUNCIL FOR MEDICAL SCHEMES (CMS)
INQUIRY UNDER SECTION 59 OF THE MEDICAL SCHEMES ACT

HELD AT
BLOCK A, ECO GLADES 2, OFFICE PARK, CENTURION

25 SEPTEMBER 2019

DAY 10

PROCEEDINGS HELD ON 25 SEPTEMBER 2019

ADV TEMBEKA NGCUKAITOBI: Good morning we are continuing the investigation under Section 59 of the Medical Schemes Act. Today we will be hearing testimonies from Clinpath Laboratory and JMH Holdings. The first presentation will be from Clinpath. Good morning gentlemen, I see there are two gentlemen sitting at the front. I presume you are from Clinpath?

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: Alright good. The procedure we follow
10 is we usually we take an oath from the person that will be presenting, if there is more than one person we take the oath from both of them. So what are you planning to do? Are you going to both be speaking?

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: Okay very good well let's start with the gentleman on the left – on my left. What's your name?

MR RAJENDRAKUMAR PHENKOO: Rajendrakumar Phenkoo.

ADV TEMBEKA NGCUKAITOBI: Just can you spell your surname?

MR RAJENDRAKUMAR PHENKOO: P-H-E-N-K-O-O.

ADV TEMBEKA NGCUKAITOBI: P-H?

20 **MR RAJENDRAKUMAR PHENKOO:** E-N-K-O-O.

ADV TEMBEKA NGCUKAITOBI: Is it Mister or Doctor?

MR RAJENDRAKUMAR PHENKOO: No Mister.

ADV TEMBEKA NGCUKAITOBI: Oh Mr Phenkoo.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: Alright Mr Phenkoo will you then say

after me, I and your full name.

WITNESS: I Rajendrakumar Phenkoo.

ADV TEMBEKA NGCUKAITOBI: Swear that the evidence that I shall give.

MR RAJENDRAKUMAR PHENKOO: Swear that the evidence that I shall give.

ADV TEMBEKA NGCUKAITOBI: Shall be the truth.

MR RAJENDRAKUMAR PHENKOO: Shall be the truth.

ADV TEMBEKA NGCUKAITOBI: The whole truth.

10 MR RAJENDRAKUMAR PHENKOO: The whole truth.

ADV TEMBEKA NGCUKAITOBI: And nothing but the truth.

MR RAJENDRAKUMAR PHENKOO: Nothing but the truth.

ADV TEMBEKA NGCUKAITOBI: If so raise your right hand and say so help me God.

MR RAJENDRAKUMAR PHENKOO: So help me God.

ADV TEMBEKA NGCUKAITOBI: Thank you. And your colleague will also be talking?

MR RAJENDRA HARIPARSAD: Yes.

ADV TEMBEKA NGCUKAITOBI: What is your surname?

20 MR RAJENDRA HARIPARSAD: Hariparsad.

ADV TEMBEKA NGCUKAITOBI: Hariparsad. So Mr Hariparsad can we take your oath as well.

MR RAJENDRA HARIPARSAD: Alright.

ADV TEMBEKA NGCUKAITOBI: So will you say after me, I and your full names?

MR RAJENDRA HARIPARSAD: I, Rajendra Hariparsad.

ADV TEMBEKA NGCUKAITOBI: Swear that the evidence that I shall give.

MR RAJENDRA HARIPARSAD: Swear that the evidence that I shall give.

ADV TEMBEKA NGCUKAITOBI: Shall be the truth.

MR RAJENDRA HARIPARSAD: Shall be the truth.

ADV TEMBEKA NGCUKAITOBI: The whole truth.

MR RAJENDRA HARIPARSAD: The whole truth.

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10 **MR RAJENDRA HARIPARSAD:** And nothing but the truth.

ADV TEMBEKA NGCUKAITOBI: If so raise your right hand and say so help me God.

MR RAJENDRAKUMAR PHENKOO: So help me God.

ADV TEMBEKA NGCUKAITOBI: Thank you. So we have received your written submissions but I presume that you will be taking us through that or you have a PowerPoint presentation or in whatever format you want to present.

20 **MR RAJENDRA HARIPARSAD:** Well we really don't have any sort of PowerPoint or anything we're just going to talk through our experiences as it happened to us and then we'll take it from there.

ADV TEMBEKA NGCUKAITOBI: Alright thank you.

MR RAJENDRA HARIPARSAD: Alright I'll just give a brief background on Clinpath Laboratories. We've been operating for 11 years it operated on my practice number initially as a medical technologist and we moved over to our pathologist practice number and after the audit that we went

through the pathologist exited the practice and it went back to my practice number.

ADV KERRY WILLIAMS: Mr Hariparsad perhaps you can start just by explaining how pathology practices work and how pathologists work with medical technologists for the benefit of everyone?

MR RAJENDRA HARIPARSAD: Okay pathology labs are normally run – there are two ways that pathology labs are run, one using pathology – a pathologist it runs their lab and they employ medical technologists and the other one is where a medical technologist employs other medical
10 technologists and runs their labs.

ADV ADILA HASSIM: Can you tell us what a medical technologist does versus what a pathologist does?

MR RAJENDRA HARIPARSAD: Okay a medical technologist is you basically – it's a Bachelor of Laboratory Science that you study at university of technology and while a pathologist is somebody that does a Medical Degree, a MBChB and then they further specialise into their respective fields whether it's – there's different fields, I think there's about seven or eight fields like Haematology, Clinical Pathology, Virology, Chemical Pathology, so there's various lists of qualifications that they go
20 through.

ADV KERRY WILLIAMS: So you've explained the two models to us, in the model where a medical technologist employs other medical technologist why is that a pathology practice and not a medical technology practice?

MR RAJENDRA HARIPARSAD: Well it is a medical technology practice

but we are claiming for the same work. Our scope of practice is basically the same with a few exclusions. So we can do the same sort of laboratory testing but there are a few exclusions and ...(intervention).

ADV ADILA HASSIM: Can you interpret the results or is that only a pathologist who can do that?

MR RAJENDRA HARIPARSAD: No I can it's in my scope to interpret results. Pathologists also they can interpret results as well.

ADV KERRY WILLIAMS: And final question on this point, or certainly from my side, where do we find a clear description of your scope of practice as a medical technologist I should say?

MR RAJENDRA HARIPARSAD: Well I think the Health Professional Council should have that somewhere with the SMLTSA, the Society of Medical Technologists of South Africa.

ADV KERRY WILLIAMS: As I understand it they are – scope of practices are published under the Health Professions Act I'm just checking whether one is published for medical technology?

MR RAJENDRA HARIPARSAD: Yes.

ADV ADILA HASSIM: And then before you go on can you just explain to us the structure, the ownership and employment structure of Clinpath?

MR RAJENDRA HARIPARSAD: Okay the practice runs under my practice number. I have employed two other guys to manage the practice for me, that's the Financial Director and the Marketing Director.

ADV TEMBEKA NGCUKAITOBI: Yes I suppose on the business side you must just also explain the entire value chain because from your presentation it's clear that the business model interacts with medical

specialists it interacts with medical schemes and so we just want to get a full sense of the value chain.

MR RAJENDRA HARIPARSAD: Okay how it works is it's simple, I am a medical technologist. I applied with the Board of Health Funders, I've got a practice number that allows me to do independent practice right so I go out to clinicians, canvass for samples from them, set up an infrastructure to do the lab testing, issue them back results, submit those patients that we've got from the doctors – the clinicians and submit it to the medical aids to be remunerated.

10 **ADV KERRY WILLIAMS:** A point of clarity, you say the practice currently is run under your practice number. You have sent the panel a letter which has Clinpath Laboratory CC as the header and the practice number there is 0276553 is that your practice number?

MR RAJENDRA HARIPARSAD: That's my practice number. Can I go on?

ADV TEMBEKA NGCUKAITOBI: Is that an individual practice number, I mean can you use that practice number in respect of a close corporation?

MR RAJENDRA HARIPARSAD: No.

ADV TEMBEKA NGCUKAITOBI: Why are you using it?

20 **MR RAJENDRA HARIPARSAD:** Well that's the management of the practice, the three of us manage that practice but they claim on my practice number.

ADV TEMBEKA NGCUKAITOBI: I mean I just want to understand where the risk lies you see because when the Board of Healthcare Funders gives you a number if that number is abused the risk lies on you as an individual ... (intervention).

MR RAJENDRA HARIPARSAD: That's correct.

ADV TEMBEKA NGCUKAITOBI: But if you spread it three ways including people who don't have those numbers your FD and your Marketing Director they have no risk under the Board of Healthcare Funders but now there is a scope for abuse of that, so that's why I'm asking why are you using your personal number in respect of your business because that might be a source of confusion about where the liability lies if something goes wrong?

MR RAJENDRA HARIPARSAD: Well the liability lies with me because it's
10 my practice number. I'm a medical professional so if there's abuse or fraud or whatever I am liable for that. So it's in my interest to ensure that I'm not involved in any of that.

ADV TEMBEKA NGCUKAITOBI: Alright anyway take us through then, so have you finished explaining the business model in relation to the value chain?

MR RAJENDRA HARIPARSAD: *Ja.*

ADV TEMBEKA NGCUKAITOBI: So my understanding is on the clinical side you go to clinicians, you take the samples, you test them and you return them?

MR RAJENDRA HARIPARSAD: We return reports to the doctors and we
20 submit those claims through to the medical aids to be funded. Right as it stands now my business, I mean this practice has collapsed – I've closed – by end of this month I'm going to seek employment in another lab somewhere. My practice is disintegrated at the moment so.

ADV ADILA HASSIM: Sorry can you start at the beginning?

MR RAJENDRA HARIPARSAD: Okay as it happened like I said we were practicing under Dr Manda's practice she's a pathologist. We went through that audit with Medscheme, we had to pay a penalty of R300 000,00 ...(intervention).

ADV TEMBEKA NGCUKAITOBI: No, no, no you see when my colleague says start from scratch we want to understand the entire story, we've received them, we read them but you must still tell us as if we have not received them and as if we have not read them.

MR RAJENDRA HARIPARSAD: Okay.

10 **ADV TEMBEKA NGCUKAITOBI:** So if you start off with the payment of R300 000,00 that's the end of the story not the beginning.

MR RAJENDRA HARIPARSAD: Okay.

ADV KERRY WILLIAMS: Perhaps an appropriate place to start might be explaining how you partnered with Dr Manda and how you used her practice number.

MR RAJENDRA HARIPARSAD: Okay Dr Manda joined us about say four years ago and she was – she came into the practice; we were a medical technology practice. Medical technologists get paid about 25% less than pathologists, it varies on different tests it's like 10% some tests it's like
20 50%, 30% it's a wide range. So we took the decision to find a pathologist who can do those tests or make those claims for us – for the practice.

ADV ADILA HASSIM: So that you could earn more?

MR RAJENDRA HARIPARSAD: Well ...(intervention).

ADV ADILA HASSIM: For the same test?

MR RAJENDRA HARIPARSAD: Yes to – how can I put it, she was – the

fact that you've got a pathologist gives you more credibility in the market place where it's like – how – there's a radiologist and a radiographer it's similar like that where a radiologist you know you get more credibility as a radiologist while a radiographer is just somebody that just does the tests, sends it to the doctor. So if the doctor wants a consult he can talk to me but however a doctor will want to speak to a doctor so hence we went and found Dr Manda and she joined us about four to five years ago.

ADV KERRY WILLIAMS: And how did she join you, did she employ you, is she a partner, did you employ her or how did she join you?

10 **MR RAJENDRA HARIPARSAD:** Well she joined as a partner and we were responsible, she employed us thereafter to take care of the business, to take care of the ...(intervention).

ADV KERRY WILLIAMS: What do you mean by she joined as a partner?

MR RAJENDRA HARIPARSAD: She was – she joined as a shareholder on the CC.

ADV ADILA HASSIM: Then you say she employed you?

MR RAJENDRA HARIPARSAD: As a medical technologist to oversee the running of the laboratory. Dr Manda subsequently ... (intervention).

20 **ADV TEMBEKA NGCUKAITOBI:** Sorry just explain how it came about that her practice number was used?

MR RAJENDRA HARIPARSAD: Well the claims were submitted under her practice number to the medical schemes.

ADV KERRY WILLIAMS: So the claims were submitted under her practice number to the medical schemes, in whose name were they submitted?

MR RAJENDRA HARIPARSAD: Her name as an individual.

ADV KERRY WILLIAMS: And then who got paid?

MR RAJENDRA HARIPARSAD: The practice Clinpath Laboratories and she gave us authority to collect those monies on her behalf and she was taking funds from there.

ADV ADILA HASSIM: And what was Dr Manda's clinical role in the practice?

MR RAJENDRA HARIPARSAD: She was the consulting pathologist.

ADV ADILA HASSIM: So she analysed every test?

MR RAJENDRA HARIPARSAD: Well she looked at the results and
10 provided feedback to doctors on the tests that were done. If they wanted any consultation or anything like that they should – they were speaking to her directly.

ADV KERRY WILLIAMS: And was your arrangement with Dr Manda to take a share of what was paid to Clinpath as a result of submissions on her practice number, was that arrangement in writing?

MR RAJENDRA HARIPARSAD: Yes.

ADV KERRY WILLIAMS: And did you make that arrangement known to Medscheme?

MR RAJENDRA HARIPARSAD: No ma'am I'm not sure about that one.

20 **ADV TEMBEKA NGCUKAITOBI:** Alright continue.

MR RAJENDRA HARIPARSAD: Okay as it happened we got correspondence – okay like I said there was – we got correspondence from Medscheme stating that they wanted to audit the practice initially for under Dr Manda's practice, I'm not – I can just confer what date that was. I think it was about 2018 – 2016. Can I just confer that where we got the

letter from Medscheme stating that the practice was going to be audited?

ADV KERRY WILLIAMS: For ease of reference it's the 14th May I think 2018, certainly on our records, and I just want to check you have a bundle in front of you so can you refer easily to it. Is your bundle paginated?

MR RAJENDRA HARIPARSAD: Yes ma'am what page do say that is?

ADV KERRY WILLIAMS: 27 on my bundle.

MR RAJENDRA HARIPARSAD: Yes, yes on the 14th May 2018 and then that went on right up until the end of I think it was August where the
10 payments was being withheld and then they – we signed – our Financial Director went up and met them and a penalty of R300 000,00 was paid.

MR RAJENDRAKUMAR PHENKOO: Sorry can I add on that, the penalty was based on – we did an audit and the audit process went through individual patient or medical aid numbers and the number of tests per code and because I did a Pareto Analysis meaning I took 20% of the claims. At that stage with the back and forth it was a lot higher the amount, I can't actually remember clearly, but at that time it came down to about R800 000,00 and I took the Pareto Analysis of the 20/80 analysis, I took 20% of the claims and we went through that and on
20 ending off, that was about the 15th August I think if I remember correctly, where it was a female Anita, she says that you've got to resolve it today and – by day end it has to be resolved. I called them back and I told them this is the set up, because we didn't do a 100% check so the difference worked out to just above the R300 000,00.

ADV ADILA HASSIM: The R284 000,00?

MR RAJENDRAKUMAR PHENKOO: Yes 284 to be exact. That difference we paid in penalty. So due to cash constraints of the business also were – people were not being paid and at that stage we had about 80 some odd staff members, I'm talking people employed at various locations where we had bleeding rooms and what have you. And based on that Dr Valerie Manda made the call of saying that call it a day it's okay let's take what we can take to keep the business going. So based on that Anita, myself and Devan agreed and they said we're not going to visit that again, it's a closed book.

10 **ADV ADILA HASSIM:** Okay just take a step back.

MR RAJENDRAKUMAR PHENKOO: *Ja.*

ADV ADILA HASSIM: You went and met with the two Medscheme investigators?

MR RAJENDRAKUMAR PHENKOO: Yes, yes.

ADV ADILA HASSIM: And why did you go and meet with them and what was their complaint?

MR RAJENDRAKUMAR PHENKOO: Their complaint was that ... (intervention).

20 **ADV ADILA HASSIM:** How did they determine the amount of R284 000,00?

MR RAJENDRAKUMAR PHENKOO: Okay in fact if you go back they send a matrix of – let's take a step back, they sent a matrix of medical aid numbers. That medical aid number tie up to a patient and that patient what we did was we went back into our system – into our lab system ... (intervention).

ADV KERRY WILLIAMS: Can I just ask you to slow down and take us to the documents where you are seeing this matrix?

MR RAJENDRAKUMAR PHENKOO: Okay let's – okay if I go to page 27 the page that you referred us to, 14th May 2018 that was for Medscheme. That document if we go to page 28 they basically request an audit from a date from – from a date prior to a certain date, those are the patients that they want an audit on. So similar to that they give you Bonitas, the Bonitas is handled separately that's on page 30, 31 is the matrix. So based on that in the month of May going up to August the same year it was back and forth and when I challenged it they added on more patients or more medical aid numbers but I still did the audit, I still went and pulled up the data from our system meaning, I'll take for example 3755 which is an FBC sorry to go into the detail ...(intervention).

ADV KERRY WILLIAMS: So let me just take you to the documents, in the letter you've sent the panel on page 39, are you at the right page?

MR RAJENDRAKUMAR PHENKOO: 39 okay, I'm at that page.

ADV KERRY WILLIAMS: The third paragraph down the last sentence reads:

20 “We had to data fish in archives as well as look for forms in storage.”

And then you say:

“Refer to attached audit documents.”

And there're two it looks attachments which we haven't received, is that what you're talking about?

MR RAJENDRAKUMAR PHENKOO: Okay this feedback is based on the

second audit, this feedback that you see but it does refer to the first audit also. There was two audits. So this feedback is pulling in that first audit also.

ADV ADILA HASSIM: So the first audit starts on page 27?

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV ADILA HASSIM: That's the Medscheme ...(intervention).

MR RAJENDRAKUMAR PHENKOO: Yes the Medscheme ...(intervention).

ADV ADILA HASSIM: For 13 – about 13 patients and then there was a second by Bonitas for about nine ...(intervention).

10 **MR RAJENDRAKUMAR PHENKOO:** No together with that Medscheme has got a good few medical aids on the Medscheme and Bonitas is considered separately, for whatever reason I'm not sure ...(intervention).

MR RAJENDRA HARIPARSAD: If I can interject there, they're both administered by the same group. So Medscheme *ja* it's handled by a different – well I think the same organisation just it's different divisions or different administrators.

ADV ADILA HASSIM: Okay but there are different patient names under the letter from Bonitas?

20 **MR RAJENDRAKUMAR PHENKOO:** Yes so effectively they're administering it and then you've got Medscheme which is a – call it a whole host of medical aids and then you've got Bonitas handled individually for whatever reason I'm not sure. So in May based on that we went through back and forth, initially it was a ridiculous amount of I think a good couple of hundred or a million rand or whatever the case is.

ADV KERRY WILLIAMS: What is missing in my mind is I understand the

relationship between Medscheme and Bonitas what I don't understand is what you sent them because those documents are not attached to the submission so I'd like an explanation of that?

MR RAJENDRAKUMAR PHENKOO: Okay like we've agreed in August that that chapter was closed we paid the penalty so ...(intervention).

ADV ADILA HASSIM: Whoa, whoa, so you were requested to provide some detailed information in relation to certain patients and blood tests that were conducted ...(intervention).

MR RAJENDRAKUMAR PHENKOO: For the first audit.

10 **ADV ADILA HASSIM:** For them, yes let's start with the first audit.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV ADILA HASSIM: You then say you did a data fishing exercise and you provided all that information ...(intervention).

MR RAJENDRAKUMAR PHENKOO: Yes I provided all of that.

ADV ADILA HASSIM: To Medscheme?

MR RAJENDRAKUMAR PHENKOO: To Medscheme yes.

ADV ADILA HASSIM: And what did Medscheme do with that information, why did you have to pay a penalty as you call it, if all of the information had been provided and it resolved the problem.

20 **MR RAJENDRAKUMAR PHENKOO:** In fact it's because I went and I picked 20 line items out of there – out of the entire list I picked 20 items, the 80/20 analysis, I took 20% of it and I detailed, went into line items with the files with everything in there. They say it's because I didn't do 100% check, a 100% check so you have to finished and that's the difference that 20% equates to 600 some odd thousand, it was 800 some

odd thousand, the difference there is the R284 000,00 because you didn't do that other 100% check of it you've got to pay it. That's – we closed off Anita and Devan.

ADV ADILA HASSIM: But how was the R284 000,00 calculated based on the claims – the total claims for those patients?

MR RAJENDRAKUMAR PHENKOO: Yes for those patients.

ADV TEMBEKA NGCUKAITOBI: Why are you telling us about 80/20 where does that come from?

MR RAJENDRAKUMAR PHENKOO: From a management perspective
10 statistical analysis when you do a consensus if you've got call it 5 000 pages you generally take a percentage to come up with some sort of feeling of which direction would you go and due to time constraints and they were wanting to resolve within that day, very quickly I looked at 20% of the claims and I just – it was random – it was a random pick statistical analysis.

ADV ADILA HASSIM: Of?

MR RAJENDRAKUMAR PHENKOO: Of the data that ...(intervention).

ADV ADILA HASSIM: That they requested?

MR RAJENDRAKUMAR PHENKOO: Yes. No they've requested the
20 medical aid numbers, call it 10 patients, Bonitas 10 patients Medscheme, we put it together and they came back and they said okay that code for that medial aid number we did 20, they say we did 20 I told them no we did 19 and I validated with our lab system, I validated with the MediSwitch which is an independent company that we use and we showed them the results for it. So based on that now I took 20% of that saying

that 20% that equates to 600 some odd thousand and we validated every line item it equates to 100% check so. But we didn't do every line item, we only took 20% of that if you understand what I'm saying, does that make sense, sorry?

ADV ADILA HASSIM: How long did it take you to do that?

MR RAJENDRAKUMAR PHENKOO: It took a while because our system crashed and all of that type of thing so I had to pull up data from archives ...(intervention).

ADV ADILA HASSIM: How long is a while days, months, weeks, hours?

10 **MR RAJENDRAKUMAR PHENKOO**: It took us a while, it took us about a month or maybe more because it was manual, I had to go flip up in boxes, I brought a box here to, on the second audit, to show you exactly what it constitutes, it's where we've got to go pull up the raw data and the raw data also gets filed in terms of what gets printed out from the machine, we file that plus we had to printout reports – actual patient reports which was archived and then attach that with our submissions to them, I put in a matrix.

ADV KERRY WILLIAMS: I can explain to you why this is not clear, I am looking at documents in front of me and I cannot – I can see what
20 Medscheme ask for, I can see they ask for in relation to these patients they want patient's blood request forms, they want copies of the results, they want copies of the service records, they want copies of the contracts etcetera, etcetera if you look at page 28. Then I go to your letter which explains how you responded and all you tell me is that we have to data fiche in archives as well as look for forms and then you say refer to the

attached documents which we don't have. So we don't know what you did or what you submitted to them. If you treat me like I'm your grandmother, explain it to me that way because I can assure you without the documents in front of me it's going to be very difficult to follow you.

MR RAJENDRAKUMAR PHENKOO: This is an example of a file. Maybe I can approach you just. Can I?

ADV TEMBEKA NGCUKAITOBI: No, well can you give it someone for me?

ADV KERRY WILLIAMS: Can we share it now? Okay.

10 **MR RAJENDRAKUMAR PHENKOO:** On the folder itself we got a member number, we got the patient's name and we've got the date of services there. And in the file itself it's a requisition form, the instruction that we get from the doctor to say we need to be done, the result that we had to print out from our system, some have a lot more some have a lot less. But the result itself shows what was requested corresponds with that. Together I put it into a matrix with coming from MediSwitch which is a health fund group that does our electronic submissions. So I had to collate all of that into an Excel. I'm not sure whether this ...(intervenes)..

ADV KERRY WILLIAMS: No, why do you do that?

20 **MR RAJENDRAKUMAR PHENKOO:** A spreadsheet out.

ADV KERRY WILLIAMS: Why do you do that instead of give them the documents they ask for?

MR RAJENDRAKUMAR PHENKOO: That's the documents they ask for.

ADV KERRY WILLIAMS: So included in that blood request forms were all there?

MR RAJENDRAKUMAR PHENKOO: Yes, that's what they asked for.

ADV KERRY WILLIAMS: So it's a PDF with all these things scanned there.

MR RAJENDRAKUMAR PHENKOO: Yes, all the things is there.

ADV KERRY WILLIAMS: Thank you.

MR RAJENDRAKUMAR PHENKOO: So what they've asked for is what I gave them.

ADV ADILA HASSIM: But you gave them 20% of what they asked for.

MR RAJENDRAKUMAR PHENKOO: Let's understand then, let's separate
10 the first audit with the second audit. The first audit yes, I – no, I gave them everything but only evaluated 20% of it, meaning that I chose 20% of it to prove my point.

ADV ADILA HASSIM: To prove your point that?

MR RAJENDRAKUMAR PHENKOO: That we've got our data in order. It's just that we didn't have enough time for date to do the full 100%.

MR RAJENDRA HARIPARSAD: Can I just clarify that? We got from Medscheme we got 13 patients and we got from Bonitas 9 patients.

MR RAJENDRAKUMAR PHENKOO: Yes, it went to 30 hereafter.

MR RAJENDRA HARIPARSAD: *Ja.* Then they asked for more, we
20 submitted these documents, the lab form from the doctor, the results that went out to the doctor. Basically essentially those two things, we verified it against what was billed and was paid for from their medical aid, from their website.

So on that day when Rajen went up, we had to make a call. A call was this, listen there's so many millions owing, we are saying that

you perpetrated fraud. There's a discrepancy, if we did 19 FPC's they ask for 20, the one now they penalised us for not having that data. So that – they said that is now fraud, you don't have that data, you have to – that's a penalty for you. So if I submitted 15 viral loads ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: Sorry, we do need that set of documents. I see they have been returned to you.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: But we should take them and copy them.

MR RAJENDRA HARIPARSAD: Okay, can I go on? So basically what
10 happened is, if you have a look at that, we need to actually provide you guys with that document that they send back to us to say, right, you submitted these documents. From the documents you submitted, we only got 19, one is missing. We asked can you give us that one that's outstanding and we can go and you know look for it. Give us more time for that.

However, at time when he went up from that toll analysis and whatever they did, like if I did 15 tests and I only provided 13 this thing for the two was a penalty. So I had to pay that penalty. So if the tests cost R50.00, so I had to pay R100.00 because the two tests were – I
20 didn't provide the two documents. So it all worked out that ...(intervenes)..

ADV ADILA HASSIM: So you couldn't proof to them that you had done those additional two tests.

MR RAJENDRA HARIPARSAD: Yes.

ADV ADILA HASSIM: But that you claimed for.

MR RAJENDRAKUMAR PHENKOO: But we have requested.

MR RAJENDRA HARIPARSAD: We requested time extension to get that documents. However, we requested that for the stuff that we submitted, pay us the thing, you know I mean we gave you all the documents. The other stuff – give us more time and we'll provide the documents to show you that we did the tests.

Like I said, we had stuff in storage, we had to go and retrieve those boxes from 2016. We archive most of our data on the IT system as well. We did experience a IT crash so that became a nightmare for us as well. So we were just not happy the way they did this thing.

ADV ADILA HASSIM: So in your example, they ask you to provide documents for 15 tests to prove that you did those tests.

MR RAJENDRA HARIPARSAD: Yes.

ADV ADILA HASSIM: You provided 13. Were they satisfied with the 13 that you provided to say those were – were they satisfied?

MR RAJENDRA HARIPARSAD: Well, that's – I don't think so they were satisfied ...(intervenes)..

ADV ADILA HASSIM: What remained to be the problem in respect of the 13?

20 **MR RAJENDRA HARIPARSAD:** Okay, can ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: I would like to – we've submitted the data for the ones that he says except the two that we didn't. We said okay, give us the data. You say for call it, Raj Phenkoo, we did 3755, you did 20 of we submitted 18. We don't have another two for Raj Phenkoo, in all our data, please you tell us when the date was, what we did.

ADV ADILA HASSIM: But you claimed for it.

MR RAJENDRAKUMAR PHENKOO: No, we didn't claim for it. They claimed that we did 20. We submitted 18, we claimed for 18. They say we did 20. So you say we did two more, so please give us the data, please tell us when was that.

How when so at least we can go back and reflect, maybe we've missed something, maybe I didn't go into a box. I don't know but our record on MediSwitch that does the submission, electronic submission, don't show that additional. So it was asking something that we didn't do.

10 **ADV TEMBEKA NGCUKAITOBI:** Can I just take you back because you see what we are trying to do, we trying to see whether there's anything unfair in the way that the schemes are administering their authority under Section 59 of the Act.

MR RAJENDRAKUMAR PHENKOO: Okay.

ADV TEMBEKA NGCUKAITOBI: So one of the things that they do is to conduct investigation to verify whether or not you did provide the services that you've claimed for.

MR RAJENDRAKUMAR PHENKOO: Yes.

20 **ADV TEMBEKA NGCUKAITOBI:** Now the reason we are struggling with getting the sequence right is because you jump into the end.

MR RAJENDRAKUMAR PHENKOO: Okay.

ADV TEMBEKA NGCUKAITOBI: Without giving us the step by step. Now you've just mentioned, Mr Hariparsad has just mentioned that you felt that the way they did it was unfair.

MR RAJENDRAKUMAR PHENKOO: H'mm.

ADV TEMBEKA NGCUKAITOBI: Now unless you took us through the steps, it's very difficult for us to work out why you say things were not done fairly. Is it because you could have proven all of the 15 tests but you were not given enough time?

Or is it because you never claimed for the two they alleged you claimed for and in respect of the 13 that you claimed for, as far as you were concerned, everything had been done according to book? And the unfairness then came when they alleged, they never proved, but you felt they were putting you under too much pressure.

10 **MR RAJENDRAKUMAR PHENKOO:** Okay, to respond to that, on the first audit due to business constraints Dr Valerie Manda made the call of saying, it's okay, forego. It's okay, we'll call on you when business is normal, the 280. On the second audit ...(intervenes)..

ADV TEMBEKA NGCUKAITOBI: No but sorry, what is okay that you can go because we want to understand, how do the schemes administer their investigations and ...(indistinct) what impact that has on you.

MR RAJENDRAKUMAR PHENKOO: Okay. That ...(intervenes)...

MR RAJENDRA HARIPARSAD: Can I just respond there?

MR RAJENDRAKUMAR PHENKOO: Yeah, h'mm.

20 **MR RAJENDRA HARIPARSAD:** Well, that's the whole issue that we've got with Medscheme. Their audit process, we could never get clarity on their audit process. That is why we making this complaint. They audited us, fair enough, we provided some data. However when we asked them, you say that we claimed for this patient, show me that claim.

They didn't give us that information. If they told me I did 20

FPC's on Rajen Phenkoo but I submitted 18, I'm asking them give me details of the other two. You cannot make the allegation that I defrauded this medical aid.

MR RAJENDRAKUMAR PHENKOO: Okay sorry, I'd like to bring back to ...(intervenes)..

ADV KERRY WILLIAMS: Can I just pause you there?

MR RAJENDRAKUMAR PHENKOO: Okay.

ADV KERRY WILLIAMS: Because this is also going to the unfairness as I understand it, so we've read your submission and I just want to take you
10 to it to make sure that we understanding it properly, at page 39 again if you go to paragraph 4.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: The fourth line you say, no claim numbers and service dates were provided. Is this the point you making?

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV KERRY WILLIAMS: Mr Hariparsad ...(intervenes)..

MR RAJENDRA HARIPARSAD: Yes.

ADV KERRY WILLIAMS: Okay, if you go to page 41.

MR RAJENDRAKUMAR PHENKOO: Yes.

20 **ADV KERRY WILLIAMS:** The second sentence, you say Diwan, and this is Medscheme, Diwan Fleming responded by stating that his data was or her data was compiled from a statistical report and he himself/herself does not know which patients or claims the variances from his audit pertains to. Is this what you saying?

MR RAJENDRA HARIPARSAD: Yes.

ADV KERRY WILLIAMS: Can you explain that just with reference to the specific examples.

MR RAJENDRA HARIPARSAD: Okay.

ADV KERRY WILLIAMS: So you've submitted 13, proof that you've services let say 13 patients. They say you serviced 15. You ask them to provide proof that they've serviced the extra two.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV KERRY WILLIAMS: And as I understand it, they cannot.

MR RAJENDRAKUMAR PHENKOO: They haven't.

10 **MR RAJENDRA HARIPARSAD:** They haven't up till this date.

MR RAJENDRAKUMAR PHENKOO: To this date.

MR RAJENDRA HARIPARSAD: That they have not given us that information to say, you got your medi claim of 15. We say we only did 13, we never got paid for that other two so show us that information that you've got on you system.

ADV KERRY WILLIAMS: Now why do they not give this you?

MR RAJENDRAKUMAR PHENKOO: We've requested on numerous occasions.

MR RAJENDRA HARIPARSAD: Yes.

20 **MR RAJENDRAKUMAR PHENKOO:** And we never got any feedback on it. It's our data, it's our property. That's the response I got from Diwan. Okay, I'd like to further enhance this that we talking about. If you refer to page 13, that was correspondence on the 27th of February this year. I'll take you to ...(intervenues)..

ADV ADILA HASSIM: Sorry, I'm sorry Mr Phenkoo, I just and I've ja,

we've all read all of this.

MR RAJENDRAKUMAR PHENKOO: Okay no ...(intervenes)..

ADV ADILA HASSIM: So we looking for the gaps ...(intervenes)..

MR RAJENDRA HARIPARSAD: I think he just wants to ...(intervenes)..

ADV ADILA HASSIM: And the one thing I just want to clarify is that when you talking about specific tests or claims.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV ADILA HASSIM: Were they saying that for patient- when they say you over serviced a patient, they must have a claim, right, that they have
10 assessed which to them looks like you have done more tests whatever number than ought to be done.

MR RAJENDRAKUMAR PHENKOO: Okay.

ADV ADILA HASSIM: Right, so is that what they are saying to you that for a particular patient, they don't have the name of the patient, but they know the medical scheme number.

MR RAJENDRAKUMAR PHENKOO: They may ...(intervenes)..

ADV ADILA HASSIM: You over serviced.

MR RAJENDRAKUMAR PHENKOO: Yes, that's what they say. Their
20 response to us in the matrix that is disclosed to us from them, they do not tie that back to that medical aid number. My response is going back from that patient. I create the medical aid number which is a patient. I create all of his dates of services, it was 10 times, I've got the dates of services. I've got the lab number per date of service. A requisition of each one, a requisition meaning the instructions to perform those pathology.

Together with the results I've created a matrix with that going

back but their response to us is they only take a code and they say you over serviced. So they don't tie it back to your patients, I don't see that. So therefore we request which patient is that additional, please tell us,

ADV ADILA HASSIM: So they take a code ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: They take a code and not tie it back ...(intervenes)..

ADV ADILA HASSIM: And they say you've done 100 odd tests under this code number.

MR RAJENDRAKUMAR PHENKOO: Yes.

10 **ADV ADILA HASSIM**: And that is over servicing why?

MR RAJENDRAKUMAR PHENKOO: Now that's what we want to find out from them. If you say this code is – we did two extra, please give us the details. Tell us which medical aid number it is, we'll go back and have a look at it.

ADV ADILA HASSIM: But there's another issue here which is that it's not you the lab ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV ADILA HASSIM: Who determines what tests to do?

MR RAJENDRAKUMAR PHENKOO: No, it's the doctor that request.

20 **ADV ADILA HASSIM**: It's the doctor.

MR RAJENDRAKUMAR PHENKOO: Yes, the doctor requests.

ADV ADILA HASSIM: So the doctor will submit the blood request form.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV ADILA HASSIM: And will tick on the boxes ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV ADILA HASSIM: What you must do.

MR RAJENDRAKUMAR PHENKOO: Yes, we only obey that instruction. I'd like to further enhance this. The correspondence starts from page 13 but I'd like to go to the summary that's on page 15. If you go down to the matrix itself, it says R407 930.46 – sorry, are we on there? And that is for Medscheme. On the same date for correspondence on the 17 that's for Bonitas now ...(intervenes)..

MR RAJENDRA HARIPARSAD: Page 17.

MR RAJENDRAKUMAR PHENKOO: On page 17 but I'll go to the end of
10 that which is on page 19. At the end of that matrix it says the value of R407 930.46 also. So you've got Medscheme – Bonitas which is different, they doing the same matrix for identical, it can never be. It can never be that we've performed, they duplicated that matrix. They've duplicated that matrix applying those codes on both the columns.

I'd like to further enhance that on page 15, with the matrix showing R407 930.46 if you go to the paragraph below that, your erroneous claims in bold says R183 000. But if you go to the Bonitas one, on the same – on page 19 their erroneous claims is R224 000. So how is that possible?

20 With the very same matrix which I disagree with because collectively it's Bonitas and Medscheme all of them, you can add it up, if you understand. So for us to do R407 000 on Medscheme itself and R407 000 on Bonitas itself, it's impossible.

ADV ADILA HASSIM: But is it not what they are saying, the two amounts add up to 407.

MR RAJENDRAKUMAR PHENKOO: No, it's specific for Medscheme, that's specific for Bonitas.

ADV ADILA HASSIM: Yes but its 183 some odd plus 2 ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: 224.

ADV ADILA HASSIM: 224.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV ADILA HASSIM: Which add up to the total amount?

MR RAJENDRAKUMAR PHENKOO: Yes but I'm saying that the table itself cannot be the same because we take a medical aid number which is
10 a patient, that's for Medscheme.

MR RAJENDRA HARIPARSAD: Okay maybe I should just show you ...(intervenes)..

ADV ADILA HASSIM: Because Medscheme administers Bonitas as well, isn't that so.

MR RAJENDRAKUMAR PHENKOO: Yes but on the first audit those two matrix were different.

MR RAJENDRA HARIPARSAD: Okay, the point what Rajen is making here, if you look at that on page 14.

MR RAJENDRAKUMAR PHENKOO: The first item.

20 **MR RAJENDRA HARIPARSAD:** 3743, it says total claim was 5, total correct was 3, total incorrect was 2, right.

MR RAJENDRAKUMAR PHENKOO: Percentage.

MR RAJENDRA HARIPARSAD: And there's a percentage of 40% which we get penalised for, right. You go on to page 18 ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: (Indistinct).

MR RAJENDRA HARIPARSAD: And it's the same thing there. You look at the second line item 19154, the third line item 642, third line item 642. So it seems like they just copied and pasted the thing and said go and find that 3 – that first line 2 is wrong, go and find me the data for that too.

MR RAJENDRAKUMAR PHENKOO: In my mind right now for that particular code they said that we did 5 total claims for Medscheme with all the medi claims and with Bonitas we also done 5. So in other words they're saying we did 10.

10 **ADV KERRY WILLIAMS**: The innocuous answer would be that this is just a little bit lazy and they just replicated the table but they have split by virtual the proportion of members that are on Bonitas and the proportion of members on the other ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: No they didn't proportion it because ...(intervenes)..

ADV KERRY WILLIAMS: How do you know?

MR RAJENDRAKUMAR PHENKOO: We went through our data and based on our data therefore – could I actually put the matrix up, no. I got a matrix on my laptop sorry ...(intervenes)..

20 **ADV TEMBEKA NGCUKAITOBI**: Sorry, I mean ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: Will it display the detail I'm talking about?

ADV TEMBEKA NGCUKAITOBI: *Ja*, I mean look there is the problem in the sense that the total figure at 15 is 407 and the total figure at 19 is also 407. But these are meant to – but the figure below 407 at 15 is 183

and the figure below 407 at 19 is 224. So that's your complaint that there's inconsistency in numbers?

MR RAJENDRAKUMAR PHENKOO: Yes, it cannot be correct.

ADV TEMBEKA NGCUKAITOBI: *Ja*, look that's fine. Can we just get into the problems that you are identifying with the masses? I mean I can see there can be an explanation to it.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: This is not – you should be spending a lot of time on this. The numbers do not correlate.

10 **MR RAJENDRAKUMAR PHENKOO:** Okay.

ADV TEMBEKA NGCUKAITOBI: So let's get into ...(intervenes)..

MR RAJENDRA HARIPARSAD: We don't have much time. All I can say is madams and sir, we went through an audit twice. They fail to provide us with data from the first audit of what we did wrong or what they claim we did wrong.

On the second audit, they told us the same thing. We asked for the discrepancy data, they couldn't provide it for us, right. They stopped our payments. They've excluded us from claiming on my practice number ...(intervenes)..

20 **MR RAJENDRAKUMAR PHENKOO:** April.

MR RAJENDRA HARIPARSAD: From April onwards, from the 1st of April. So my complaint is very simple. You audited us but you not coming back with information about what you claim I did wrong. Provide me with that information, I will fight that thing.

ADV TEMBEKA NGCUKAITOBI: It's now in relation to the what you call

the first audit. Just to make sure that we understand what your complaint is. They identified what you called 15 files or 15 patient files.

MR RAJENDRA HARIPARSAD: H'mm.

ADV TEMBEKA NGCUKAITOBI: And they asked for specific information per file. On your version you gave them everything.

MR RAJENDRAKUMAR PHENKOO: Yes.

MR RAJENDRA HARIPARSAD: As much as information as we could.

ADV TEMBEKA NGCUKAITOBI: Yes and they didn't question the information that you gave, they simply said there was outstanding
10 information in relation to different files.

MR RAJENDRA HARIPARSAD: Yes.

ADV TEMBEKA NGCUKAITOBI: Now in relation to those different files, you say you didn't have the information and you asked them to give it to you?

MR RAJENDRA HARIPARSAD: Yes.

ADV TEMBEKA NGCUKAITOBI: And they said it's our own information, it's ...(intervenes)..

MR RAJENDRA HARIPARSAD: Yes.

ADV TEMBEKA NGCUKAITOBI: You don't have a right of access to it.

20 **MR RAJENDRAKUMAR PHENKOO:** Okay, just to enhance on your thing. It's because they don't tie back to a medical aid number or patient. It's very difficult to actually say that yes, we've made an error on Raj Phenkoo.

The matrix is purely in the code so it's very difficult to actually go back and say that we've over serviced Raj Phenkoo. I'd like to - I've

got a matrix here. It's just a pity that we ...(intervenes)..

ADV ADILA HASSIM: Sir, would you just explain why would you be responsible for over servicing and not the doctor because you don't make the request for the blood tests.

MR RAJENDRAKUMAR PHENKOO: Yes. No, it's not us. They want us to quantify what we were paid for in relation to our submission and what we got paid for. So yes, we not questioning the – what test we do. So yes, the requisition proves that what was requested is what was done, we didn't do anything more than that because the facts speak for themselves.

10 Now the difference is that they say we did so many more of a particular test and we've researched our data, we were going to pull out and we submitted it and they said we did extra. And we asked for the extra please ...(intervenes)..

ADV ADILA HASSIM: Were you paid for the extra?

MR RAJENDRAKUMAR PHENKOO: We were not paid for the extra. We only submitted the 18 so we not got paid for 20. We only got paid for 18. So for the second audit which was this year, I did a 100% check ...(intervenes)..

20 **ADV TEMBEKA NGCUKAITOBI:** Just to make sure I understand Medscheme has given this numbers – I know you complain about the numbers but there will be an explanation I'm sure in due course. They've given you a number say 183 which is the extra number that you owe. Your version is you dispute that you owe their 183 at all.

MR RAJENDRAKUMAR PHENKOO: Yes, because I've given them a 100% check on the second audit, a 100% on every patient. If you tell me you

got extra, please tell me tell me which one it is. Please by all means please tell me. Please tell us because we got our house in order.

MR RAJENDRA HARIPARSAD: We had a few shortcomings on the first audit.

MR RAJENDRAKUMAR PHENKOO: Yes.

MR RAJENDRA HARIPARSAD: We had stuff in archives and whatever. We couldn't provide all the data. Whatever we provided, they looked at it and said okay. So that's why ...(intervenes)..

ADV TEMBEKA NGCUKAITOBI: In relation to my understanding about
10 your version on the first audit is that it was unfair for Medscheme not to give you extra time.

MR RAJENDRAKUMAR PHENKOO: Time.

ADV TEMBEKA NGCUKAITOBI: Baring in mind the scope of what you had to envisage.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: And if they had because you said you had one day. If they had the unfairness in the investigation is their refusal to give you extra time to prove your quote unquote innocence.

MR RAJENDRA HARIPARSAD: Yes.

20 **MR RAJENDRAKUMAR PHENKOO:** Yes. On the second audit just to take it further, I did a 100% check. Every medical aid number they've requested, I went and I pulled out and we've based it on – sorry, we based it on four systems meaning that requisition with a result. The requisition is the doctor's orders, instructions ...(intervenes)..

MR RAJENDRA HARIPARSAD: That forms that you ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: That form, then the result which we've per lab number per patient we've conferred. That – then I went further, I went to our Chiron our lab system, we printed out. So if you got a result, it's on our lab system meaning that we got a result.

MediSwitch is an independent IT company that handles the actual processing, conferred it with them, they said call it Raj Phenkoo, yes we submitted for Raj Phenkoo and we submitted one for him. The next system that we used was their website. Where on their website you can access Raj Phenkoo, yes these are the procedures that we've done.

10 I went physically therefore it took me a lot of time for each patient for each line item, I went physically and I looked and I said yes. We corresponds to four system on the second audit corresponds 100%. So you say it's extra, please tell it to us because I've based it on four systems. And it's independent, your own website also I based it on. So therefore we go back to understand its matrix is actually not ideal. How is actually his benchmark where he's cutting from, is not ideal. That's where we stand.

ADV TEMBEKA NGCUKAITOBI: Can you just tell me, do you know how you were identified for investigation?

20 **MR RAJENDRA HARIPARSAD:** No. I don't know maybe because of the first audit.

ADV TEMBEKA NGCUKAITOBI: I'm talking about the first audit because I mean not everyone was audited, some people were audited and others not.

MR RAJENDRA HARIPARSAD: Well, my feeling – this is my feeling is

that if there's a doctor that Medscheme is gunning. They go and investigate who he's associated with and then they go and investigate those people.

So my feeling is that because maybe we did work for a doctor that Medscheme got a problem with, so they said okay, he's doing work with this radiologist, that pathology lab, he's sending to that physiotherapist, let's go and investigate all of them. It's ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: Your suspicion.

MR RAJENDRA HARIPARSAD: It's my suspicion and I got no proof about
10 this but that is why I feel I was victimised, why we as Clinpath were victimised.

ADV TEMBEKA NGCUKAITOBI: Who was the doctor that they were gunning for on your theory?

MR RAJENDRA HARIPARSAD: I think he's coming to testify here on Friday, Dr Magan.

ADV ADILA HASSIM: And so is the – is it the allegation – your suspicion that they are allegedly ...(intervenes)..

MR RAJENDRA HARIPARSAD: I'm under oath.

ADV ADILA HASSIM: That you were in cahoots let's say with a doctor
20 and you were getting some ...(intervenes)..

MR RAJENDRA HARIPARSAD: Perverse incentive.

ADV ADILA HASSIM: Yes, for processing those tests.

MR RAJENDRA HARIPARSAD: Well, that's my suspicion. That's what I think. That's my feeling that ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: That's what they thinking.

MR RAJENDRA HARIPARSAD: That they got a problem with this guy. They haven't paid him a few million. He's brought in lawyers and whatever to contest this thing. So they said okay, let's investigate all his associates and see what's going on here. But I got no proof and we'll just leave it at that.

ADV TEMBEKA NGCUKAITOBI: Now if you then go to the second audit, you say there that you actually verified ...(intervenes)..

MR RAJENDRAKUMAR PHENKOO: Yes, I verified.

ADV TEMBEKA NGCUKAITOBI: What you call the four systems.

10 **MR RAJENDRAKUMAR PHENKOO:** Yes.

ADV TEMBEKA NGCUKAITOBI: And then it showed that it correlates 100%.

MR RAJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: And why did Medscheme not accept your version?

MR RAJENDRAKUMAR PHENKOO: Then they say it's their property, they don't want to disclose the variances and they terminated dealing with us. And just to add on to the – not to complicate anything any further, in April when they stopped, then they send a letter saying, sorry, we not
20 going to deal with you anymore. You cannot submit.

And in terminating that Medscheme revenue stream to call it, the practice itself was in the region of 35 to 40%. That's a huge cash flow hurt and that's when the organisation has reached its point of where it is and there's probably about 80 plus odd people that actually out there right now. So the organisation is and we in ...(intervenes)..

MR RAJENDRA HARIPARSAD: We'll we have basically closed up shop. We can't afford lawyers and things like that. I mean it's just a costly exercise so I'm going gently into that good night, you know what I'm saying. I'm cutting my losses and I'm going back to go and work for somebody.

After 12 years of running a good clean practice you know and that includes the 85 people that we had employed at that – in the time that you know. We're a little small lab in Tongaat. We contributed about 100 million in that 12 years of existence of this company to that little
10 community there. Unfortunately that it's come to the point now where you know these guys are all collecting UIF now and I have to go and look for a job basically and including Rajen as well.

ADV KERRY WILLIAMS: So our procedural rules require us to give the complaints to Medscheme to respond to. So Medscheme has given us a response and has indicated that Dr Manda left your practice.

MR RAJENDRA HARIPARSAD: Yes.

ADV KERRY WILLIAMS: The insinuation I think is left under a cloud. Can you just explain when Dr Manda left and why she left?

MR RAJENDRA HARIPARSAD: We could not pay her what, you know –
20 she made claims, those claims were not coming through. She was not getting reimbursed from the schemes. We had to pay salaries and basically we had to had to keep that lab afloat. So she took the decision that you know what, I'm out of here, go back to medical technology and try and, you know, save the lab, save some jobs, whatever.

However, she went to another lab, she's getting paid and whatever there. So she's okay. But we got put onto a second audit. The second audit ...(intervenes).

ADV KERRY WILLIAMS: Sorry, you didn't answer my question about when she left?

MR RAJENDRA HARIPARSAD: It was November – end of October. October last year 2018. After we went through that audit and – *ja*, basically it just came down to hey, you know what, we're not – she can't sustain being in the practice anymore. So she basically went to
10 another lab where she could get reimbursed and to date we haven't seen that response from Medscheme. I'm seeing this for the very first time today, that response from Medscheme.

Also, they laid a charge of fraud and I'm seeing that for the first time. I made numerous requests to Paul Midlane, you know give me some sort of information, there's HPCSA complaints, I never got anything to say that hey, you know what, you did fraud, this is the charges. The last email I sent to him was on the – in June and I never got a response back.

I said you know what, you laid the charge, I've made inquiries
20 there, no one's coming forth with this charge. HPCSA hasn't contacted me about this complaint. It's like September, I still haven't got any information from HPCSA to state that there's fraud or there's allegations of wrongdoing. So to me it's like a witch hunt, you know what I'm saying? It's like you're messing with me, I'm going to mess with you, kind of thing.

So that feeling of victimisation has put me to a point where we have to close that lab down and, you know, get on with things because crying about it is not going to pay the bills, you know, our overdrafts and what, what, what, what, what. So I'm seeing it for the first time, this affidavit. I've asked the guys.

ADV KERRY WILLIAMS: Are you aware of the whistle blower reports? There were four whistle blowers that ...(intervenes).

MR RAJENDRA HARIPARSAD: No, ma'am, that's ...(intervenes).

ADV KERRY WILLIAMS: That is how they identified.

10 **MR RAJENDRA HARIPARSAD**: That's what I'm saying ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: It's news to us.

MR RAJENDRA HARIPARSAD: I – we never got this information.

ADV KERRY WILLIAMS: Do you know who is Mr Serapelo?

MR RAJENDRA HARIPARSAD: Serapelo? No, ma'am.

MR RANJENDRAKUMAR PHENKOO: I'm not sure. Who is he?

ADV KERRY WILLIAMS: Do know who is Ms Joubert? Sonja Joubert?

MR RANJENDRAKUMAR PHENKOO: She used to be a marketing person here in Johannesburg.

ADV KERRY WILLIAMS: But did she work with your practice?

20 **MR RANJENDRAKUMAR PHENKOO**: She did work for ...(indistinct) in Johannesburg. There were quite a few employees that moved on and with non-achieving Dr Valerie Manda also.

ADV KERRY WILLIAMS: Your mic.

MR RANJENDRAKUMAR PHENKOO: Dr Valerie Manda, she worked under Dr Valerie Manda as marketing and due to non – I handled HR

files, due to non-achieving, Dr Valerie Manda asked them to move on and ...(intervenes).

ADV KERRY WILLIAMS: So she was ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: She probably being ...(intervenes).

ADV KERRY WILLIAMS: You're saying she was dismissed?

MR RANJENDRAKUMAR PHENKOO: Probably – yes, she was dismissed, she was dismissed.

MR RAJENDRA HARIPARSAD: She was retrenched because we
10 couldn't pay her.

MR RANJENDRAKUMAR PHENKOO: So asked to move on and there were other staff from also in the Durban office that moved on due to non-payments and that type of thing and maybe they said something that we don't know. We – it's only a suspicion that I think right now that you mention it. I never thought about it sorry. So it's a disgruntled employee, I don't know. Maybe, I'm not sure.

MR RAJENDRA HARIPARSAD: Well, she was owed a bit of money.

MR RANJENDRAKUMAR PHENKOO: Salary outstanding.

MR RAJENDRA HARIPARSAD: In back pay and she did threaten that
20 she's going to go to CCMA and things like that. You know, at that time we didn't have the money to pay her. In fact we're owing staff I'd say maybe about a million to 1.5 million in back pay. You know and it's unfortunate, you know, we got put under this audit.

We lost our support from the doctors that used to support us because we didn't have money, we can't buy reagents, we can't do the

tests. They're obviously going to go to another lab that can do it.

So whoever was giving us the work, slowly but surely they just left us and they've moved on to other labs.

ADV KERRY WILLIAMS: Did you receive complaints from doctors regarding the services you provided?

MR RAJENDRA HARIPARSAD: Yes, yes, they just told us you know what, you guys are not cutting it anymore from what you were. I mean ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: In terms of service delivery.

10 **MR RAJENDRA HARIPARSAD:** We ran a good practice for a number of years. We had not complaints about our turnaround times and things like that.

ADV KERRY WILLIAMS: Until?

MR RANJENDRAKUMAR PHENKOO: Until the cash flow ...(intervenes).

MR RAJENDRA HARIPARSAD: Until we got ...(intervenes).

ADV KERRY WILLIAMS: So but roughly can you give me a year – when did you start getting complaints from doctors regarding your services?

20 **MR RAJENDRA HARIPARSAD:** It's one year now. It's about a year that – *ja*. Say as soon as, you know, we experienced a cash flow from the initial audit and then from there it was just a steady downhill after that where we're owing our suppliers in the region of about – it's actually shocking, that I'm owing Roche like 800 000. I'm owing the Scientific Group another 500 000. There's other small guys, Beckman

Coulter, Bio-Rad, Randox, NHLS, NHLS QA department, you know, for all our quality control and it just – you know, it is what it is now.

ADV KERRY WILLIAMS: And have you had any complaints regarding the quality of your services, not just the turnaround time and service delivery but the actual ...(intervenes)?

MR RAJENDRA HARIPARSAD: *Ja, ja.*

MR RANJENDRAKUMAR PHENKOO: Sorry, I don't think service delivery and quality, there's additional ...(indistinct).

MR RAJENDRA HARIPARSAD: Well, at the end of the day if you can't
10 provide a 24-hour turnaround time then you can't be in this industry. You know, you can't be in this industry because at the end of it all, there's a person there that's sick and if you can't provide him that service, you know, leave the room kind of thing you know?

ADV KERRY WILLIAMS: And did you have – so you would employ – there'd be nursing – there would be nurses, phlebotomists.

MR RAJENDRA HARIPARSAD: Phlebotomists.

ADV KERRY WILLIAMS: And your phlebotomists were all properly qualified?

MR RAJENDRA HARIPARSAD: Yes.

20 **ADV KERRY WILLIAMS:** And who would check to ensure to ensure that they had the requisite qualifications to be a phlebotomist?

MR RAJENDRA HARIPARSAD: Well, the HR. You have to check SANC registration and things like that. Also, registration as phlebotomist with the NHLS – I mean, the LTSA where they provide phlebotomy certificates and whatever.

ADV KERRY WILLIAMS: So you've seen the response from Medscheme. Have you ...(intervenues)?

MR RANJENDRAKUMAR PHENKOO: Well, we only saw it now.

ADV KERRY WILLIAMS: I appreciate that.

MR RANJENDRAKUMAR PHENKOO: So we haven't actually had a chance to read it and understand it.

ADV KERRY WILLIAMS: Haven't read it yet.

MR RAJENDRA HARIPARSAD: Sorry.

MR RANJENDRAKUMAR PHENKOO: *Ja*, so we've requested it on
10 numerous occasions. We've requested – if it's anything please by all means talk to us and let's resolve it.

ADV KERRY WILLIAMS: Perhaps I can ask a question on that because it relates exactly to the evidence you've give today and it's certainly not something that can be resolved partly because the annexures to your first submitted were not given to us and partly because we don't have the annexures to Medscheme's affidavit. They also haven't given that to us. But I'm going to take you to the point which contradicts your evidence today so we can determine what to make of it.

If you go to page 59 and it's under paragraph 6.1. Okay, so
20 paragraph 6 and point 1, I'll take you through it now but as I understand your evidence earlier, this relates to the first audit and you indicated that you provided them with all the information that they needed including all the blood test requisitions. Now here, Devan Fleming goes on affidavit and says:

“Certain claims submitted by Dr Manda did not have the

blood test requisition for tests while other claims had blood results without the requisition to do tests.”

And then there’s an attachment which we haven’t seen and of course you haven’t seen so we don’t know what those are. But that contradicts – she’s gone on oath and contradicts of what you’ve said and then on the next page if you go over to page 60 at paragraph 7, she carries on and says:

10 “On the 14th of May 2018 I requested Clinpath and Dr Manda to supply me with all the requisitions to do tests and the results of tests conducted for the period. Upon receiving the information I reconciled it to see if all the tests were done as requested and that the test results were as requested by the patient’s doctor.”

She carries on:

“I requested the Clinpath Laboratory and Dr Manda to supply me with outstanding information to validate the claims where information was not supplied and where discrepancies were identified.”

20 So there’s a clear difference between you and Medscheme on this issue.

MR RANJENDRAKUMAR PHENKOO: Sorry, I disagree with that statement.

ADV KERRY WILLIAMS: I ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: I disagree with that statement.

ADV KERRY WILLIAMS: I assumed as much, so there’s a clear

discrepancy in relation to this. We cannot resolve it.

MR RANJENDRAKUMAR PHENKOO: Yes.

ADV KERRY WILLIAMS: Because you haven't provided us with the annexures and currently we don't have the annexures from Medscheme. But we would like to, so can we please have the annexures and clarity on this point.

MR RANJENDRAKUMAR PHENKOO: Yes, most definitely from the first audit – most definitely, I'll go back and I'll – we've actually had to move offices ...(intervenes).

10 **ADV KERRY WILLIAMS:** But can also tell us why you disagree with that paragraph?

MR RANJENDRAKUMAR PHENKOO: I've supplied all the data that I had. So he says that we haven't. I'm sorry. So there was data that you think that we're supposed to have had, please tell us. So for every patient ...(intervenes).

ADV KERRY WILLIAMS: You met with Devan Fleming?

MR RANJENDRAKUMAR PHENKOO: Yes, I met with Devan Fleming. I met with Devan Fleming and with the – Anita.

MR RAJENDRA HARIPARSAD: Anita Potgieter.

20 **MR RANJENDRAKUMAR PHENKOO:** She was their supervisor. I met with them with the files on the table. I had two boxes of files on that day. That was about the 15th of August.

ADV KERRY WILLIAMS: Okay, so that's your response to paragraph 7. In paragraph 8 Ms Fleming says:

“On further investigation I discovered that some of the

test results were duplicated. Same tests were done twice for certain patients on the same date.”

And then there’s a reference to an annexure which we don’t have.

MR RANJENDRAKUMAR PHENKOO: In fact on that one, our service provider, which is MediSwitch, part of the Altron Group, have sent official correspondence which was shared with them that there was an IT issue on a few. Not on a hell of a lot, on a few line items which ...(intervenes).

10 **ADV KERRY WILLIAMS:** How many?

MR RANJENDRAKUMAR PHENKOO: I’m not sure, I’ll have to go back to the details. I’ll have to go back to my email, sorry, ma’am. That was on the first audit. So we have – so their response right now is going back to the first audit also. I thought, as per their words, that is closed, signed and sealed, let not go back and visit that one but this response is going back to that. I’m sorry, that’s exactly how I feel.

ADV TEMBEKA NGCUKAITOBI: That’s fine, but you’ll remember that you told us that even in relation to the first audit you felt that it was unfair.

20 **MR RANJENDRAKUMAR PHENKOO:** Yes, it was unfair but we said it’s okay let’s – it’s water under the bridge, let’s go on. It did hurt the practice, no doubt, but by them repeating themselves, that means they’re not doing – they’re not true to what they want to do, they’re doing it for – I would – my thinking is more an economic gain because those funds are not theirs, those funds are the patients’. If it was

there, why didn't they return it back to the patient? Why didn't they put it back into the patients' funds?

ADV TEMBEKA NGCUKAITOBI: No, no, no.

MR RANJENDRAKUMAR PHENKOO: In his monetary savings.

ADV TEMBEKA NGCUKAITOBI: Well come back to the issue of the funds. What we are now dealing with is your allegation that Medscheme has been unfair in the way they treated you.

MR RANJENDRAKUMAR PHENKOO: Yes.

10 **ADV TEMBEKA NGCUKAITOBI:** So we're putting their version which says we've actually been fair to the way we've treated you because you've committed certain irregularities.

MR RANJENDRAKUMAR PHENKOO: Okay.

ADV TEMBEKA NGCUKAITOBI: Which were – are obliged by law to investigate. Now some have been put to you. If you've got page 53 of that document.

MR RANJENDRAKUMAR PHENKOO: 53.

ADV TEMBEKA NGCUKAITOBI: Yes, it's duplicated at 61, yes.

MR RANJENDRAKUMAR PHENKOO: Okay.

20 **ADV TEMBEKA NGCUKAITOBI:** Now this is the sum total of the case against you, so I don't know if you want to just go through it and then ...

MR RANJENDRAKUMAR PHENKOO: Can we have more time for this now, sir?

ADV TEMBEKA NGCUKAITOBI: No, definitely you can have time, to – can respond to the ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: We're seeing this for the very first time.

ADV TEMBEKA NGCUKAITOBI: You can respond to the affidavit in full.

MR RANJENDRAKUMAR PHENKOO: I mean, we've – I've asked Mr Midlane for this information and he kept on saying go and check with SAPS, go and check with SAPS, go and check with SAPS. They had the information, why didn't they give it to me?

ADV TEMBEKA NGCUKAITOBI: *Ja*, I understand, your point is that for
10 the – in relation to the first investigation you paid money – you believed that it was settled and it was over.

MR RANJENDRAKUMAR PHENKOO: I've emails confirming that.

ADV TEMBEKA NGCUKAITOBI: Yes.

MR RANJENDRAKUMAR PHENKOO: As per the meeting minutes.

ADV TEMBEKA NGCUKAITOBI: And then later on you were investigated which also surprised you.

MR RANJENDRAKUMAR PHENKOO: Again, yes.

ADV TEMBEKA NGCUKAITOBI: But you are now even more surprised
20 that in this inquiry issues coming from the first investigation are resurfacing.

MR RANJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: Alright. Now in relation to what is at page 53 you're saying that you're not able to answer us now, you want time.

MR RANJENDRAKUMAR PHENKOO: I'd like to read or we'd like to

read the response of this document in detail and understand it also. I think it will be a bit unfair for us to like ...(intervenes).

MR RAJENDRA HARIPARSAD: It's a criminal case, you know, you need to consult some sort of lawyer or something like that to say hey, you know what, they made these allegations, let's test this thing or whatever, you know?

MR RANJENDRAKUMAR PHENKOO: Let's understand it, if we've done wrong, we've done wrong, sorry, I mean ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: You're saying, just to ...(intervenes).

10 **MR RANJENDRAKUMAR PHENKOO:** We made – sorry, sir, we told them if we did wrong show us that thing and we'll sort it out, we'll pay you guys or don't just come with a heavy hand and say hey, you know what, you defrauded Medscheme and I'm taking 300 000 from you and do what you want, go and call whoever you want.

ADV TEMBEKA NGCUKAITOBI: Yes, now just to make sure I understand ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: And that is unacceptable.

ADV TEMBEKA NGCUKAITOBI: Just to make sure I understand what you are saying to us that if this is what they're alleging, this is what
20 they should have told you during the investigation, it's unfair that they are confronting you with this in the Section 59 Inquiry when this what should have been put to you at the time of the investigation.

MR RAJENDRA HARIPARSAD: Most definitely.

MR RANJENDRAKUMAR PHENKOO: That's what we asked for. We asked for that information. If there's allegations of fraud, show us so

we can sort it out. They never did that. They were never forthcoming. It seemed to me like they wanted to drag this thing out, drag it out, drag it out until I reached this point where I said I had enough and I'm not going to challenge this thing.

MR RAJENDRA HARIPARSAD: Sorry, just to add on. To me it seems like they didn't want to resolve it because we didn't have the resources to employ – I tried, don't get me wrong, we've tried to employ a lawyer, the lawyer is a R150 000 upfront before we even start. I mean, for a small practice, which is being challenged on the cash flow, it was like a
10 no brainer. I mean, we'll try and challenge it himself. His communication with Paul Midlane was to try and resolve it and if it came back I'm sure it cost, the infrastructure – a lot to even have this infrastructure around if that communication happened earlier on. I'm sorry, I'm not proposing a solution, but *ja*.

ADV KERRY WILLIAMS: Would you provide us with a written response to the documents that have now been provided to you?

MR RANJENDRAKUMAR PHENKOO: Most definitely, ma'am, we will.

MR RAJENDRA HARIPARSAD: The allegations would – and, like I said, if there's substance to it, we will ...(indistinct).

20 **ADV TEMBEKA NGCUKAITOBI**: Just to make sure I understand the issue around Ms Joubert. You're saying that she was let go which implies that she was fired, is that correct?

MR RAJENDRA HARIPARSAD: She was retrenched, we gave her a retrenchment letter.

ADV TEMBEKA NGCUKAITOBI: And was she retrenched as a

consequence of this investigation?

MR RAJENDRA HARIPARSAD: No, she was let go because we had to start downsizing our organisation.

ADV TEMBEKA NGCUKAITOBI: Yes, it was the impact of the financial constraints you were ongoing.

MR RAJENDRA HARIPARSAD: We had to close down our Joburg operations. It eventually led to the Johannesburg operation shutting down. We're still owing rent and it's a *gemors*. It's a *gemors*, that's what I can say. We've been in so much financial difficulty it's unreal.

10 **ADV KERRY WILLIAMS**: In what position was Ms Joubert employed?

MR RAJENDRA HARIPARSAD: She was a Marketing Rep.

ADV KERRY WILLIAMS: That's right, she said so. And did she go to the CCMA afterwards to assert her rights?

MR RAJENDRA HARIPARSAD: We didn't hear anything after that. She – I think she had somebody call who said he was lawyer or something like that and we said send the documents to us, we'll try and see what we can do but I think she was just pissed off that she was not going to get paid that money, you know? And – hey we got sorted out, you know what I'm saying? We got sorted out. We're just in a bad position and
20 the situation just spiralled and we are where we are. We're broken people here now, you know.

ADV TEMBEKA NGCUKAITOBI: Alright, you may continue if you have further aspects you still want to cover with us.

MR RAJENDRA HARIPARSAD: Can we just respond to these allegations and things like that and maybe you guys can set aside

another time for us to come and respond to that?

ADV TEMBEKA NGCUKAITOBI: We will give you time to respond. I mean, what was asked for by my colleague is if you could give us a written response to those allegations.

MR RAJENDRA HARIPARSAD: Yes.

ADV TEMBEKA NGCUKAITOBI: Including any aspects that you feel are unfair. I mean, one of them is you can't be told in this inquiry about allegations that should have been given to you at the time.

MR RAJENDRA HARIPARSAD: Yes.

10 **ADV TEMBEKA NGCUKAITOBI:** Because they didn't close down your practice based on these allegations, they closed them down based on what they were investigating then.

MR RAJENDRA HARIPARSAD: *Ja*, it's – procedurally they withheld information from me – from us to make a fair response and it's just heavy-handed. It's heavy handed. There's no ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: The money that you paid – I mean, I understand you say this is unfair and I have no doubt that Medscheme will say it was fair but the money that you paid from your side, why did you pay that money?

20 **MR RAJENDRA HARIPARSAD:** At that moment in time we had to pay our staff, we needed to get some sort of – we were put on audit in May, June, July, August, September, October. No payments are coming through, 35% of my revenue stream is gone. I'm owing people money, Roche, the Scientific Group, staff, there's a gun pointed to my head, sign this document ...(intervenes).

ADV KERRY WILLIAMS: How much did you pay ultimately?

MR RAJENDRA HARIPARSAD: Well, they withheld that ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: There was about 800 and odd. Let me – it was about 882 or something of that nature that was held back for that period of time. R882 814.60. So I've justified the 20% claim that I spoke of earlier, equated to about 620 000. So the difference of that worked out to 287 000.

ADV KERRY WILLIAMS: That's what you paid?

MR RANJENDRAKUMAR PHENKOO: Yes, that's what – we paid
10 penalties. Due to the constraint of the business, the outstandings, people putting pressure, staff not getting paid. Between Dr Valerie Manda and Harry – sorry, Hariparsad, they made the call of saying it's okay, we'll lose that money, it's okay, but whatever little we've got we can still pay the staff off, pay some people off, make some arrangement with the suppliers. So that's why.

MR RAJENDRA HARIPARSAD: And subsequent to that we were making claims – they're paying it to us and then reversing it on the next remittance. So if I did blood tests on patient A, they'll pay it to me on the 15th of January. On the next pay run our remittance will come back
20 that that's been reversed.

MR RANJENDRAKUMAR PHENKOO: With no reason.

MR RAJENDRA HARIPARSAD: We asked for information about that, that was never given to us. It seemed like; you know ...(intervenes).

MR RANJENDRAKUMAR PHENKOO: It's in our document there.

MR RAJENDRA HARIPARSAD: They wanted to sort us out.

ADV TEMBEKA NGCUKAITOBI: No, no, no – I mean, we hear that you are complaining about their conduct but what we are really interested in is to establish the facts, so it doesn't really help us to keep on reminding us that Medscheme ...(intervenes).

MR RAJENDRA HARIPARSAD: The fact is at that moment in time I had to make a call. Do I bear this loss and carry on with my business or do we fight this thing and close down? I made the call. Me and Dr Val made the call, we said listen, we've got people to pay, it's Christmas coming up, let's just sign this document and move on.

10 January comes, they stopped the payments again. Valerie leaves, it's back to my practice number. Then this nonsense starts again where they start auditing, paying the claim, reversing the claim. Then they send – there's a whole list of patients, go and sort it out, 16 patients, we get the documentation, we send it through. They still say there's a discrepancy. They say – they used the term fiduciary responsibility; in the interests of fiduciary responsibility your practice is a risk and we cannot – we're terminating services from you.

ADV TEMBEKA NGCUKAITOBI: Just in relation to the first one that you agreed that you made a business call that it's better that it should
20 be paid, the quantum – the amount that was paid, how was that arrived at?

MR RAJENDRA HARIPARSAD: Rajen explained it previously.

MR RANJENDRAKUMAR PHENKOO: Okay. At that point we – it was a lot higher. With the back and forth correspondence of what we've submitted, it came down to about 882 000 and based on that matrix

when I went in August to Medscheme's office, the audit office there, I took my files through and I didn't do a 100%, I took the 20%. That 20% equated to his matrix, those random pick, equated to 600 and some odd thousand. So what Anita and Devan did was take 800, subtract what I justified, that's the balance, please, that's your penalty. That's how it was done and due to the business constraints, Dr Valerie and Hariparsad made the call of saying – just to keep the business going.

ADV TEMBEKA NGCUKAITOBI: So what I'm trying to understand here is that – you remember that when they started the investigation, they
10 gave you specifics.

MR RANJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: Of what they claimed you owed.

MR RANJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: But when the figure was arrived at, the final figure to be reclaimed or repaid, was there any reference made to the original claim that they said you were owing the schemes?

MR RANJENDRAKUMAR PHENKOO: No.

ADV TEMBEKA NGCUKAITOBI: So even the last figure was just a bargain figure, it was a thumb sucked figure?

20 **MR RANJENDRAKUMAR PHENKOO:** The 882?

ADV TEMBEKA NGCUKAITOBI: *Ja.*

MR RANJENDRAKUMAR PHENKOO: No, no, it was based on the matrix because the same principle of a code, they said we did ten items and we can justify seven, so call it the three items that was not, what's the value of the three items, then they took that percentage and they

took from a date of call it 2016 to the date of the audit. You did so much, so that percentage, 3% will be – and that's how they came up with the total.

ADV TEMBEKA NGCUKAITOBI: No, I understand, but what I'm trying to get to is, you see, if you've over-serviced, as an example and a consequence of the over-servicing is R520 because you are claiming for an extra hour that you didn't actually service and that is what I should pay back.

MR RANJENDRAKUMAR PHENKOO: Okay, let's take a step back,
10 sorry. When you say over-service, our correspondence meaning the requisition to the results are correct.

ADV TEMBEKA NGCUKAITOBI: Yes.

MR RANJENDRAKUMAR PHENKOO: So we haven't done anything extra. So we haven't over-serviced.

ADV TEMBEKA NGCUKAITOBI: Yes.

MR RANJENDRAKUMAR PHENKOO: They haven't showed the difference that they claim to tie back to the patient. So they haven't showed that difference. If they showed the difference based on a patient and yes, shown on the internet, on their website, yes, we've
20 over-serviced that patient but we've done only – we were requested to do one only and we've done five, no problem, by all means, please.

MR RAJENDRA HARIPARSAD: Take the money, take it back.

MR RANJENDRAKUMAR PHENKOO: Yes, it's okay.

ADV TEMBEKA NGCUKAITOBI: No, I understand, but that's what I'm trying to get to is that when you finally agree on the number to be

repaid.

MR RANJENDRAKUMAR PHENKOO: Yes.

ADV TEMBEKA NGCUKAITOBI: It's not a number based on the actual discrepancy if it was over-servicing, it's just a number you've negotiated with the scheme.

MR RANJENDRAKUMAR PHENKOO: Yes, based on their matrix.

MR RAJENDRA HARIPARSAD: What you guys need to ascertain from Medscheme is how do they determine that. We didn't know how they determined it.

10 They gave us a figure initially of 2.3 million. They said you have defrauded by 2.3 million, provide us with this documentation. We provided whatever we could, it came down to 800 000. There was still that discrepancy of some forms we couldn't get and whatever. They said right, 264 000 penalty, take the rest, carry on. But we were still submitting to them – we're submitting to Medscheme, so they're withholding our payments. For six months they withheld our payments. We came to a point to say you know what, these guys are going to – they're going to pull the trigger, we have to make the call that we have to make this business survive.

20 So after all was said and done, they said there's 800 000 there, you can't show us this information here, that's the penalty, we're holding back your amount – this amount and we pay all the rest. So that 800 000 was monies that we claimed that was owing to us. They said right, from all that was this thing, so much is the discrepancy, we're going to withhold that thing. And they did that subsequently.

However, they were not – they played dirty, they played dirty with us after that where ...(intervenes).

ADV KERRY WILLIAMS: Just another question just in relation to this meeting in August that Mr Phenkoo went to where this negotiation took place, are there any minutes of that meeting?

MR RANJENDRAKUMAR PHENKOO: I've got some email correspondence to the effect, I just need to pull it out, it's in my case.

ADV KERRY WILLIAMS: Please can we have any minutes of that meeting or any correspondence relating to it because it would be good
10 to see.

MR RANJENDRAKUMAR PHENKOO: No problem.

ADV KERRY WILLIAMS: Did you complain or – *ja*, did you file any complaint with the Council for Medical Schemes regarding your allegations of unfair treatment by the schemes?

MR RAJENDRA HARIPARSAD: Well, I just sent an email and then nothing happened and then about a week ago a lady called me and say hey, you know what, you made this complaint, come and testify at these hearings. So I said *ja*, okay, I'll come and tell my story here.

ADV KERRY WILLIAMS: Just separate this hearing from the Council
20 for Medical Schemes that regulates the medical schemes, right?

MR RAJENDRA HARIPARSAD: No, no ...(intervenes).

ADV KERRY WILLIAMS: So at the time when all of this was happening and you felt that you were being put under pressure by the schemes and that you were being treated unfairly, did you lay a complaint with the Council for Medical Schemes then?

MR RAJENDRA HARIPARSAD: No.

ADV KERRY WILLIAMS: No.

MR RAJENDRA HARIPARSAD: I did send an email, a blanket email to a few people at the HPCSA, to the council as well and I never got a response back until I heard from Nonkululeko Ngele. So it was kind of surprising – and also, like I said, there was a dossier here that was prepared against Clinpath or for Clinpath. I'm seeing it now today and I don't want to say anything disparaging or anything but the council has to protect us, man. They have to protect us against these people
10 because they're using – they're withholding funds that don't belong to them. We are small people here. I'm not Lancet, I'm not Ampath. I can't fight this thing here and this is – this opportunity that you guys have, don't waste this thing, man. Don't waste it.

ADV TEMBEKA NGCUKAITOBI: If you've got no further evidence to give, I mean, it doesn't really help to preach to us, that's what you're doing.

MR RAJENDRA HARIPARSAD: No, no, I'm sorry, I'm just getting a bit emotional, sir.

ADV TEMBEKA NGCUKAITOBI: Alright, no, that's fine.

20 **MR RAJENDRA HARIPARSAD**: But that's how I feel.

ADV TEMBEKA NGCUKAITOBI: No, that's fine.

MR RAJENDRA HARIPARSAD: It's an opportunity to change and transform this industry.

ADV TEMBEKA NGCUKAITOBI: Alright, have you got anything else to say on the facts of this thing because I'm sure everybody has their

views about what we should do. If we allowed everybody, we'll never finish the investigation. Do you have anything else to add to your complaints or anything else you would like us to enquire into?

MR RAJENDRA HARIPARSAD: We just need more time to go through that document. We never had sufficient time to prepare any sort of thing. Like I said ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: I appreciate that.

MR RAJENDRA HARIPARSAD: About a week ago they said hey, come and talk here.

10 **ADV TEMBEKA NGCUKAITOBI**: No, no, that's fine, I appreciate that. Okay, well the secretariat will be in touch with you in relation to your response to this. There are certain documents we would till also ask you to give to us but ...(intervenes).

MR RAJENDRA HARIPARSAD: We will co-operate.

ADV TEMBEKA NGCUKAITOBI: Yes, thank you very much. Alright, I presume then that marks the end of your oral testimony today. If you are called later you will be notified. Thank you very much for coming and for submitting and I understand it's a rather tough environment to be in and the feelings of unfairness, I mean, are perfectly
20 understandable from where you stand but our job is defined by the terms of reference.

MR RAJENDRA HARIPARSAD: Can I just say something?

ADV TEMBEKA NGCUKAITOBI: Yes, please.

MR RAJENDRA HARIPARSAD: In the medical field your defining thing should be the patient, you know? The medical schemes need to act in

the interest of the patient. You know, a lot of people consider this now a business. It's not a business, there's sick people at the end of it all and we must do right by them. Thank you.

ADV TEMBEKA NGCUKAITOBI: Thank you. We will take the adjournment until the next presentation at one, which is by JMH Holdings. The inquiry is adjourned. Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV TEMBEKA NGCUKAITOBI: Good afternoon. We are continuing the
10 Section 59 of the Medical Schemes Act Inquiry. The next presentation is from JMH Holdings which stands for Joint Medical Holdings. Who is going to be doing the presentation?

MR VISHNU RAMPARTAB: It is myself, Vishnu Rampartab.

ADV TEMBEKA NGCUKAITOBI: Rampartab?

MR VISHNU RAMPARTAB: *Ja.*

ADV TEMBEKA NGCUKAITOBI: Are you doctor or mister?

MR VISHNU RAMPARTAB: Mister.

ADV TEMBEKA NGCUKAITOBI: Mister. Are you the only one who is going to be speaking?

20 **MR VISHNU RAMPARTAB:** I have got Solly Govender our CFO who is also presenting.

ADV TEMBEKA NGCUKAITOBI: Mr Govender? Alright. Good. So, Mr Rampartab, let me take your oath. Are you happy with the oath or an affirmation?

MR VISHNU RAMPARTAB: Happy with that.

ADV TEMBEKA NGCUKAITOBI: Happy?

MR VISHNU RAMPARTAB: Yes.

ADV TEMBEKA NGCUKAITOBI: Will you say after me, I and your name?

MR VISHNU RAMPARTAB: I, Vishnu Rampartab.

ADV TEMBEKA NGCUKAITOBI: Swear that the evidence that I shall give.

MR VISHNU RAMPARTAB: Swear that the evidence I shall give.

ADV TEMBEKA NGCUKAITOBI: Shall be the truth.

10 **MR VISHNU RAMPARTAB:** Shall be the truth.

ADV TEMBEKA NGCUKAITOBI: The whole truth.

MR VISHNU RAMPARTAB: The whole truth.

ADV TEMBEKA NGCUKAITOBI: And nothing but the truth.

MR VISHNU RAMPARTAB: And nothing but the truth.

ADV TEMBEKA NGCUKAITOBI: If so, please raise your right hand and say so help me God.

MR VISHNU RAMPARTAB: So help me God

ADV TEMBEKA NGCUKAITOBI: Thank you. Mr Govender, are you happy with the oath?

20 **MR SUNNY GOVENDER:** Yes, I am.

ADV TEMBEKA NGCUKAITOBI: Alright, Sir will you say after me, I and your name?

MR SUNNY GOVENDER: I, Sunny Govender.

ADV TEMBEKA NGCUKAITOBI: Swear that the evidence that I shall give.

MR SUNNY GOVENDER: Swear that the evidence that I shall give.

ADV TEMBEKA NGCUKAITOBI: Shall be the truth.

MR SUNNY GOVENDER: Shall be the truth.

ADV TEMBEKA NGCUKAITOBI: The whole truth.

MR SUNNY GOVENDER: The whole truth.

ADV TEMBEKA NGCUKAITOBI: And nothing but the truth.

MR SUNNY GOVENDER: And nothing but the truth.

ADV TEMBEKA NGCUKAITOBI: Please raise your right hand and say so help me God.

10 **MR SUNNY GOVENDER:** So help me God.

ADV TEMBEKA NGCUKAITOBI: Thank you. So Mr Rampartab, let us start with you. We have got this document.

MR VISHNU RAMPARTAB: *Ja.*

DR MANDA: And we have another one which is this, which have just been handed up, the affidavit.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: And we have your full submission including the litigation matter ...(intervenes).

MR VISHNU RAMPARTAB: Correct.

20 **ADV TEMBEKA NGCUKAITOBI:** That you were involved in. So you can take it we are familiar with some of the content here.

MR VISHNU RAMPARTAB: Okay.

ADV TEMBEKA NGCUKAITOBI: Although not here, and not here.

MR VISHNU RAMPARTAB: That is fine.

ADV TEMBEKA NGCUKAITOBI: So, you can take us through in

whatever structure you have decided.

MR VISHNU RAMPARTAB: Okay. What I have done here is I have prepared a presentation that talks through the affidavit itself and I will talk through the presentation now. So just to introduce myself, Vishnu Rampartab, I am the Group General Manager. Sunny Govender is our Chief Financial Officer. With us we do have Dr Thabethe and Dr Thesi Reddy who are the two directors on our board and have been involved in this investigation from the time it started.

In terms of some background, JMB Holdings Proprietary Limited
10 owns four acute hospitals in the Durban and Isipingo precinct. Many of the group's hospital facilities were established in the early 1980's by a small group of black doctors who ... (intervenes).

ADV TEMBEKA NGCUKAITOBI: I am sorry, I just see on this piece of paper actually that I forgot to just get your counsel to put themselves on record even though they have no speaking rights.

ADV SHANE DAYAL: Thank you, Mr Chair, my name is Shane Dayal, I am from the Durban and the Johannesburg bar. I am instructed in this matter by Maharaj Attorneys.

ADV TEMBEKA NGCUKAITOBI: Thank you Mr Dayal. Do you have a
20 junior?

ADV SHANE DAYAL: No, unfortunately not.

MR MANOJ MAHARAJ: Thank you Chair, I am Manoj Maharaj from Maharaj Attorneys, the instructing attorneys in this matter.

ADV TEMBEKA NGCUKAITOBI: Thank you, Mr Maharaj.

MR VISHNU RAMPARTAB: So, just to go on. Many of the group's

facilities were established in the early 1980's by a small group of black doctors who, because of apartheid laws in place at the time, had no place to consult, admit and manage their patients who were predominantly from the lower and middle income black communities and not as an incentive for wealth creation. The patient profile of the group remains the position to date. The doctor shareholding company comprises approximately 500 shareholders represented by individuals, companies and trusts, almost 100% of which are black owned.

10 Just some background in terms of these two matters that we have been engaging with in terms of the inquiry with Medscheme and the two matters were Ascot and City hospital. I will talk through Ascot Park Hospital first.

ADV ADILA HASSIM: Sorry, Mr Rampartab, will you expand on what you have just said in the first slide about the genesis of JMH Holdings and why it is you have entities, in particular, geographic locations.

MR VISHNU RAMPARTAB: Okay.

ADV ADILA HASSIM: I mean, will you be dealing with that in any further detail?

20 **ADV ADILA HASSIM:** I do not ... (intervenes) I am not asking for a lengthy presentation but, just a little bit more.

MR VISHNU RAMPARTAB: Okay, so the hospitals that I mentioned were started in the early 1980's by doctors from the predominantly black African and Indian communities and those doctors practiced in the Durban area. They set up their rooms in those areas at the time when there were no rooms for them. They had to build their own rooms and set up practice.

These hospitals were then built after the rooms were established around where they set up their rooms and then they slowly evolved their practice from there.

ADV TEMBEKA NGCUKAITOBI: What is an ‘acute hospital’?

MR VISHNU RAMPARTAB: Acute hospital is where a patient is admitted for ongoing stay as opposed to a day hospital where they are admitted for just a day. A day procedure.

ADV TEMBEKA NGCUKAITOBI: Just distinguishable from a day hospital?

10 **MR VISHNU RAMPARTAB:** Correct.

ADV TEMBEKA NGCUKAITOBI: Now, one of the reasons I think my colleague is asking for you to expand on this topic is that you will know that our terms of reference include the question of racial profiling.

MR VISHNU RAMPARTAB: *Ja.*

ADV TEMBEKA NGCUKAITOBI: And so when we have a hospital group that is predominantly black, servicing predominantly black patients, that is the context in which the question arises, if it is relevant at all to what you are going to tell us.

20 **MR VISHNU RAMPARTAB:** I will be talking to the slides in terms of why we believe it is relevant.

ADV TEMBEKA NGCUKAITOBI: Okay.

MR VISHNU RAMPARTAB: So, in the Ascot Hospital Park matter, we were approached in June 2018 by McDonald Marabo representing Medscheme Forensics. He at the time, advised that he was representing a number of schemes under Medschemes administration and that they were

requested to carry out an investigation in terms of the admission patterns of doctors at some of the hospitals and particularly, at Ascot Park within our group.

They had some concerns regarding the admission patterns and that they were going to place the accounts payments on hold with effect from that date. That was followed by a formal letter on the 14th of June. A meeting was then facilitated between Mr Marabo from the Forensic Unit and the JMH team on 4 and 5 July at Ascot Park Hospital. The forensic team, without providing any case specific details of the allegations, 10 reiterated their concerns around admission patterns of some of the doctors at the hospital. Particularly in a meeting of the 4th of July, Mr Marabo raised concerns around the admission process in the hospital as an investigation had shown that many instances where patients were admitted into the hospital but they could not pick up a record of the treating doctor having consulted the patient prior to the admission.

They were concerned that patients would simply come into the facility and being admitted without having been consulted by a doctor. I found that rather strange and explained to him that patients were only admitted into the facility after being referred from the admitting doctor 20 who generally issue an admitting note to the hospital. I then facilitated an interview with our Ascot Park Hospital reception supervisor who elaborated and confirmed the admission process. A few inpatient files were presented for him to see the evidence.

At the time we had requested that he provide details of the files and the queries so that Marilyn could call up the files for those specific

patients and present the evidence of the admitting doctor's referral. No further details were provided at the time. At the meeting of the 4th of July, Mr Marabo also expressed concerns around the admission patterns of one of the doctors practising at Ascot. I advised that I could unfortunately not comment on the admission patterns of the doctor but would be glad to facilitate a meeting with him so that they could engage him with their concerns. I accordingly facilitated a meeting with the doctor. Unfortunately they chose not to discuss with me in presence and they had a private meeting with him.

10 After the close of the meeting, I again reiterated the need for him to present the details of his concerns so that we could investigate and present feedback. No information was presented at the time.

ADV TEMBEKA NGCUKAITOBI: Recollection of your evidence and certainly the affidavit was that you had a chat with this fellow on 14 June.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: He gave you one story. Shortly thereafter he sent you a letter.

MR VISHNU RAMPARTAB: *Ja.*

20 **ADV TEMBEKA NGCUKAITOBI:** Which you say then the letter differed from the contents of the conversation because in the conversation the allegation pertained to doctors but in the letter the allegation pertained to the hospital itself. I see now you have moved on to July without tying it up with the issue of the letter that was sent in June immediately.

MR VISHNU RAMPARTAB: So, in the letter he mentioned that he had concerns regarding the admission patterns of the doctors, right? But when

we met with him, at the meeting he also expressed concerns around the admission patterns of the hospital itself. You know the doctors refer patients to the hospital. So he was concerned that patients were being admitted into the hospital without any prior consent.

ADV TEMBEKA NGCUKAITOBI: Can you go to page 155 of your original affidavit – at paragraph 47 of the affidavit? An affidavit that you used to bring the urgent application against Medscheme. So if you go to paragraph 47, it says,

10 “Shortly after speaking with me, Marabo transmitted a letter to me by email that was addressed to Ascot Park, a copy of which is annexed”

And then you say,

“Its contents were materially different from his telephonic conversation with me because it made mention of investigations into Ascot Park Hospital rather than into admitting doctors.”

MR VISHNU RAMPARTAB: Just get to that. You see, if you look at his letter, his letter was regarding the admissions at the hospital.

ADV TEMBEKA NGCUKAITOBI: Yes.

20 **MR VISHNU RAMPARTAB:** But yet in the discussions we had with him he mentioned also admission patterns of doctors.

ADV TEMBEKA NGCUKAITOBI: I understand it, I mean I just want the line that says the letter differed from the conversation because in the letter he is referring to the hospital rather than the doctors. I mean as to – in the affidavit you say that you are being misled about what is going

on.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: From the get-go.

MR VISHNU RAMPARTAB: *Ja.*

ADV TEMBEKA NGCUKAITOBI: So, I just want to know if, you know, to make sure that I get that story right because your testimony a couple of minutes ago was that actually there was not too much of a discrepancy between what was said and what was in the letter.

MR VISHNU RAMPARTAB: As I said, in the letter, he mentioned that he
10 had concerns around the facility but when we spoke to him he also mentioned he had issues with the doctor that was admitting at the facility. You remember the doctors are independent; they are not employed by the hospital.

ADV TEMBEKA NGCUKAITOBI: Okay.

MR VISHNU RAMPARTAB: We then wrote to Mr Marabo just to follow up on the matter because we had not received any correspondence from him. And then on the 19th of July he then sent us a letter placing us on terms in terms of Section 59.

ADV TEMBEKA NGCUKAITOBI: But there had been a prior meeting. I
20 mean, before that. You met with them on the 4th of July.

MR VISHNU RAMPARTAB: Correct. *Ja.*

ADV TEMBEKA NGCUKAITOBI: *Ja.* And in that meeting he did tell you that this is the likely outcome?

MR VISHNU RAMPARTAB: So at that meeting he had not shared any detail, specific details, he just made general comments. He advised that

he had some concerns and by that time he had already placed the accounts on hold.

ADV TEMBEKA NGCUKAITOBI: That is one of the things I could not work out here because when he phoned you on the 14th of July my understanding from your affidavit was that already by that time Medscheme had decided that payments were being suspended.

MR VISHNU RAMPARTAB: That is correct.

ADV TEMBEKA NGCUKAITOBI: Ja. And, but the actual formal notification came on the 19th of July?

10 **MR VISHNU RAMPARTAB:** Correct. So he sent us a letter on the 14th telling us that, if you look at the letter of the 14th he says that;

“As indicated by principles of corporate governance, we decided to hold facilities payments pending resolution of the matter.”

ADV TEMBEKA NGCUKAITOBI: Yes.

MR VISHNU RAMPARTAB: That is on the letter of the 14th.

ADV TEMBEKA NGCUKAITOBI: Okay.

20 **MR VISHNU RAMPARTAB:** So, the 19th we then received the letter and I think on the 19th there were two key areas that he had identified as concerns. One was hospital length of stay where he indicated that hospital accounts indicating costs of scheduled medication during patient’s admissions without any record of consultation for either the family practitioner and/or the specialist. And then he says that there were health carer provider visits only occurring on the third day of admission and patients were being admitted for three days or longer without any

procedure having been scheduled or no record of consults but the health care provider, prior to those days.

The hospital had also been admitting psychiatric patients to Ascot Park Hospital despite not having a psychiatric licence. So if I can just elaborate on this. What he mentioned was that they had looked at Medscheme records and in looking at the Medscheme records they could not find claims from the consultants, being the GP's and the specialists for consult, for the GP prior to coming to the hospital, or for the specialist, for the first day of admission. And that is the basis on which
10 they then set out the investigation. I will show – I think I have in the presentation as well just explained the background and some of the investigation in the presentations.

ADV TEMBEKA NGCUKAITOBI: Now, were the payments actually suspended on, I know they told they told you they were being suspended.

MR VISHNU RAMPARTAB: It was. It was.

ADV TEMBEKA NGCUKAITOBI: Immediately on the 14th of June.

MR VISHNU RAMPARTAB: So the first payment was due to us I think on 28 June, two weeks after they sent us a letter and with immediate effect they had suspended.

20 **ADV TEMBEKA NGCUKAITOBI:** Okay.

MR VISHNU RAMPARTAB: Because, in the correspondence as well you see there is a letter that I sent to him to clarify the position and he then re-clarified and said the payments were actually placed on hold.

ADV TEMBEKA NGCUKAITOBI: And now I mean – this was the – my understanding of this affidavit is this is the first time you ever became

aware that there was any query.

MR VISHNU RAMPARTAB: That is correct.

ADV TEMBEKA NGCUKAITOBI: Of any discrepancy, whether it is hospital based or doctor based.

MR VISHNU RAMPARTAB: At no time prior to that did they raise it to us.

ADV TEMBEKA NGCUKAITOBI: Okay.

MR VISHNU RAMPARTAB: And the issue of High Care beds, their concern was that the hospital had ... (intervenes).

ADV ADILA HASSIM: Sorry, Mr Rampartab, you were, not in here, but in
10 the initial affidavit in the court case, you said that one of the anomalies that he picked up was the differences between your admission patterns or between admission patterns at this hospital and other hospitals. What other hospitals was he referring to?

MR VISHNU RAMPARTAB: So, I think they obviously looked at other hospitals, Ascot Park does not have an outpatient facility. It has patients coming to Ascot Park that are referred from specialists. An outpatient facility is where you have patients off the street going to an outpatient facility for an emergency and they would then be referred from the outpatient facility to the hospital for admission. At Ascot Park the doctors
20 have consulting rooms. Patients see them in their consulting rooms and from the consulting rooms they would then be referred into the hospital.

ADV TEMBEKA NGCUKAITOBI: Okay. When he investigates he meets with you on the, my understanding, on the 4th of July and you said, 'I cannot answer on behalf of unidentified doctors' He says, 'I can give you the names.' But he gives you the name of one doctor.

MR VISHNU RAMPARTAB: Correct. And then that is the doctor we attempted to meet on the day and he decided to obviously have a private meeting with that doctor. I think just to elaborate as well for that particular doctor what I had done, I had facilitated to have that doctor's inpatient files available so they could actually look at the files and look at referrals from the doctor and admission patterns. I think the query he had that was that patients would rock up into the hospital without referral from the doctor and get admitted. So we wanted to show him the evidence of the admitting doctor's referral note. Because that is the only basis we
10 admit into the hospital. But he decided not to look at the files.

ADV ADILA HASSIM: This was at the meeting where you offered that information?

MR VISHNU RAMPARTAB: Correct. *Ja,*

ADV ADILA HASSIM: And he declined to ...(intervenes).

MR VISHNU RAMPARTAB: To look at the files. I think on the point of the other hospitals he is obviously comparing us to the other hospitals in the area whether it was City Hospital, the other hospital that they work with being Entabeni and the other hospitals in Durban. The next point he raised was High Care beds.

20 **ADV TEMBEKA NGCUKAITOBI:** What other hospitals are in a similar sort of position as Ascot?

MR VISHNU RAMPARTAB: Okay. In the Durban precinct we have the hospitals that belong to JMH, it is City Hospital, Turok Hospital and then up the road from us we have Entabeni Hospital, Parklands Hospital, St. Augustine's, the Lenmed Group, New Shifa, Westville, Mt Edgecomb.

There are quite a few in that precinct. In terms of the other hospitals that are there, I think there are hospitals that belong to the independent groups being; Lenmed, which is New Shifa, Ethekwini and the hospitals on the hill are the predominantly the listed companies being Life Health Care and NetCare.

ADV ADILA HASSIM: Hospitals on the hill would be Entabeni, Parklands and St Augustine?

MR VISHNU RAMPARTAB: Correct. *Ja.* Okay. The second matter they raised at Ascot was the concern around High Care beds. They had on their investigation found that on occasion the hospital had admitted patients to High Care in excess of the actual licenced beds that were granted. Some background this is that the hospital has one High Care bed, licence for one High Care bed and three ICU beds. And on occasion you would find that if the High Care bed is already occupied and there is a need for a second High Care bed the hospital would then admit that second High Care patient into an ICU because it is in the same unit and then the medical aid scheme would then be charged the rate of the High Care tariff. From the hospital side we obviously believe that this is in the interest of patient care. We are not compromising patient care and we are charging the scheme at the correct tariff so we are not – the scheme is not at a loss in any particular way.

ADV TEMBEKA NGCUKAITOBI: The ICU bed is more expensive than the High Care bed.

MR VISHNU RAMPARTAB: Correct. *Ja.* That is correct. And then based on the limited information, if you look at the letter that they had

circulated, there were no specifics provided. We provided a high-level response to them and which is marked in the court papers, FA9. And you see on the submission it was very high level just spelling out based on the limited information that he had circulated to us.

A schedule of listing a sample of cases was then sent to us by Medscheme on the 1st of August and then management then engaged in a series of communications with Medscheme to provide explanations on a case by case basis and copies of the correspondence have been attached to the papers – FA9 to FA14. In terms of the communication that we had
10 sent to them, we had highlighted the fact that the information is being provided on a summary basis and the length of stay and details of the admission and particularly the fact that the admitting doctors make clinical assessments of patients and they are responsible for the admission, treatment plan and length of stay and that if they were unhappy with any queries, unhappy with any of the information provided, they should meet with those doctors so the doctors could clarify any further queries they had. And unfortunately that did not happen.

We then received a second letter from them, again on Section 59(3), dated the 3rd of September.

20 **ADV ADILA HASSIM:** Mr Rampartab, the amount that was claimed you say was based on 20% of ...(intervenes).

MR VISHNU RAMPARTAB: Of the admission.

ADV ADILA HASSIM: Of the admissions during the period of ...(intervenes).

MR VISHNU RAMPARTAB: January to ...(intervenes).

ADV ADILA HASSIM: January to May 2018. Why 20%?

MR VISHNU RAMPARTAB: So they – based on I think the cases they had audited they just extrapolated 20%. They have never at any stage provided details or a listing to say that the claim of 3.9 million is made of this, this and this case where we found fraudulent activity on the part of the hospital. There was never any schedule provided. They just used the 20% as an arbitrary number and said this is what we believe has been inappropriate admissions and they used that number to quantify it.

ADV TEMBEKA NGCUKAITOBI: You know one of the reasons why this
10 question; if you go to page 223 it has a letter from you on the 30th of July to Medscheme. The second paragraph says,

“It is difficult to respond appropriately without being presented with the details of the specific cases upon which your findings have been based.”

You have got that?

MR VISHNU RAMPARTAB: I have got that, yes.

ADV TEMBEKA NGCUKAITOBI: Now, you were never in fact given those details?

MR VISHNU RAMPARTAB: That is correct. I think if you look, that was
20 already sent to us, the first letter that came to us was on the 19th and then we wrote to them to ask them for the details. So the letter of the 30th is still at a stage where there were no specific details. It was a very general letter that we submitted.

ADV TEMBEKA NGCUKAITOBI: *Ja.* And in fact what happened is at 227 in response to that this is what they gave you.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: An email where they said,

“Attached herewith find extracts from your claim data as per your request.”

And then it says,

“We sampled examples of each issue raised from your correspondence with the understanding that your facilities actually are the primary source of information and we are secondary.”

10 So in other words, you know the allegations against you, why are you asking us?

MR VISHNU RAMPARTAB: So I think the point made is that we obviously have the admission information but they had not given us a schedule of which specific cases they were concerned around. So if they mentioned that we have a concern around case number 1275 we would be able to go to 1275 and understand what their query was. But at that stage they had not circulated any details to us. It is only after this letter they had given us a sample of cases on those three categories that we were then able to go back and respond to them on a case by case basis in the letter that I
20 had sent them later in August.

ADV TEMBEKA NGCUKAITOBI: Because here they say,

“It thus follows that the attached could be verified against your facility’s database.”

Can you just tell me at this stage, this is now the 1st of August, they had suspended you from the 28th of June anyway?

MR VISHNU RAMPARTAB: That is correct.

ADV TEMBEKA NGCUKAITOBI: So you are not getting paid?

MR VISHNU RAMPARTAB: Exactly.

ADV TEMBEKA NGCUKAITOBI: Ja.

MR VISHNU RAMPARTAB: Exactly. Exactly.

ADV TEMBEKA NGCUKAITOBI: But anyway you have got the sample now so you can go and check your primary data ...(intervenes).

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: And tell them whether they are right or
10 wrong.

MR VISHNU RAMPARTAB: So the first time that information came to us as I said was on the 1st of August, prior to that there was no schedule provided.

ADV TEMBEKA NGCUKAITOBI: Yes. So what did you do with it, I mean it is a schedule, it tells you no record of aftercare treatment, no record of aftercare treatment, no record of treating provider, but you have made claims? So at least on the face of it, it looks like it is fraudulent.

MR VISHNU RAMPARTAB: So I think that is the point I was trying make
20 at their records only. Now, unfortunately, and I will talk to my slide later as well, is that a lot of patients when they are consulted by a GP, they have no funds available – outpatient funds available, that GP will charge that patient cash. So that claim never gets submitted to the medical aid and the medical aid is obviously not going to see it as part of their claim data to say that this patient was consulted as an outpatient. And

secondly, the same with a specialist, if a patient is seen by a specialist in his rooms and the guy does not have benefits available, the same principle will apply and the scheme will unfortunately not see that transaction where the patient was charged for that service.

I met with Mr Marabo at the first meeting when he sent the schedule to me on the 1st of July. I was up in Johannesburg for a meeting and he asked whether he could meet with me. And at that meeting I carried examples of cases where we had actually had the referral note from the referring GP to say that I consulted this patient
10 beforehand and I referred this patient for admission and he did not look at that document. And even if you look at my letter that I submitted subsequently after he had sent the schedule to us, on a case by case basis I had spelt out the incidences where those patients were consulted by the GP before they were seen in hospital and they were referred. So that letter that I sent through, I will find the actual date.

ADV ADILA HASSIM: 24 August letter.

MR VISHNU RAMPARTAB: That is correct, I think that is one 24 August where it actually spells out on a case by case basis. And if you look at it ... (intervenes).

20 **ADV TEMBEKA NGCUKAITOBI:** And before that letter, there had been a meeting between you and Medscheme on the 14th of August. When I say you - your company?

MR VISHNU RAMPARTAB: No, on the 10th. He sent us a letter on the 14th.

ADV TEMBEKA NGCUKAITOBI: Yes it was 10th. Okay, I see. Because that is at 239.

MR VISHNU RAMPARTAB: Correct, *ja*.

ADV TEMBEKA NGCUKAITOBI: So ...(intervenes).

MR VISHNU RAMPARTAB: We had a quick meeting at OR Tambo airport and at that meeting I carried a sample of cases where – based on that schedule that he had sent us on the first, where we had done some preliminary investigations and I showed him that we had contacted those doctors and they had actually seen those patients and those patients had
10 actually paid them cash for those consults. Now, unfortunately, he is basing his assumptions on the evidence that he has picked up on the Medscheme database that there was no proof of payment for that consult. But that consult was obviously done as a private arrangement because the patient did not have limits available.

ADV TEMBEKA NGCUKAITOBI: If we can just go to what he actually told you because I have no doubt that will be the case of Medscheme. At 239, so High Care beds, he says;

20 “In response to the point made in our letter of 19 July on this issue, you indicated we referred to were actually housed in ICU as opposed to High Care.”

And then he says,

“We still find such explanation to be unacceptable since that way of claim submission was anomalous and contrary to licence limitations, let alone the fact that

even ICU beds were not even enough to accommodate such number of patients.”

And then they give you to the regulations. Now, one difficulty I had with this is that this is unrelated to the reason for the investigation. It flows only from your responses because the investigation was not based on the discrepancy between High Care and ICU. It was based on something else.

MR VISHNU RAMPARTAB: *Ja.* So, if I can just elaborate on that point. It is in my presentation as well later. Is that there are occasions, the hospital has four ICU beds, there are occasions in any hospital that you will find that you have an emergency that comes to you either from any existing inpatient or from the outpatient department or from a theatre case where the patient has now complicated and was not planned to be admitted into that ward.

The hospital has an obligation to treat that patient, you cannot now tell this patient, I do not have an ICU bed, I do not have a High Care bed, I am now going to send you out. That patient is already complicated. You need to manage that patient. So what the hospitals generally do in those circumstances is that they have equipment at other facilities, they borrow equipment in order to facilitate treatment for those patients and we accommodate those patients in the adjoining ward. And we have done that, you will see in my presentation, we have done that. All hospitals do that in emergencies.

ADV TEMBEKA NGCUKAITOBI: And the second part that he mentions,

“In any event you do not have enough ICU beds.”

MR VISHNU RAMPARTAB: I think that is the point he was raising because we would have gone over the licence capacity at that stage.

ADV TEMBEKA NGCUKAITOBI: But what do you say to that?

MR VISHNU RAMPARTAB: So that's the point we have – we do acknowledge that because when you have an emergency you go beyond that you can't now turn that patient away if you're full to capacity and you have a patient that comes out of theatre and is now requiring a bed you can't transfer that patient to another facility because you're going to compromise that patient.

10 **ADV TEMBEKA NGCUKAITOBI:** What's the relevance of whether you've breached the regulation to whether or not the scheme will settle the invoices?

MR VISHNU RAMPARTAB: I think from our side the important part is we have, we don't see that we've done anything wrong because we've treated the patient now prior to his providing patient care and if the scheme believes that we've done wrong then they have to obviously prove that.

ADV TEMBEKA NGCUKAITOBI: *Ja* and then the next thing they raise here and again I just want your comment on, they say:

20 "We advise that your facility's licence which is under 2 psychiatric ...(indistinct) your facility's licence is renewable on a yearly basis we're therefore not willing to recognise such letter."

That's when you gave them a letter saying this is our letter from the Department?

MR VISHNU RAMPARTAB: So those were two different matters, that was

regarding the psychiatric licence. So some background on the psychiatric licence is that Ascot Park Hospital, I think maybe just get to that slide because ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: Anyway look we are now taking you off your thing so I think just take us according to the way you've prepared your presentation.

MR VISHNU RAMPARTAB: Not a problem.

ADV ADILA HASSIM: Sorry, sorry Chair, you took Mr Rampartab off and now I just need to have a quick follow up on that because one of the
10 things that interested me, but I'm not sure whether I'm understanding it correctly is that in that FA11 for example the Medscheme investigator refers you to the regulation regarding private hospitals and seems to be suggesting that you are acting unlawfully by charging for a high care bed when you have admitted into an ICU that's what they're suggesting that you're acting contrary to the regulations. I just want to know what is the relevance of that, what is the interest of a medical scheme in regulating you in that respect?

MR VISHNU RAMPARTAB: Okay I'll see if I can answer that, so firstly
20 the tariff for high care is lower than ICU. The point I had made in my response to him was that in the circumstances where the one high care bed is already occupied we would use an ICU bed where the tariff is normally higher ... (intervention).

ADV ADILA HASSIM: No I get that but there's no harm to the Medscheme here.

MR VISHNU RAMPARTAB: That's exactly the point that's the point I tried

to make in the scheme. I think the point he made was that there were circumstances where we had gone beyond the four beds and obviously accommodated those patients but again for us it was a priority to provide care to the patient and the patient was not compromised. I don't see what loss the scheme had in that circumstance. So just in terms of 245 of the bundle, page number 249 if you look at:

“Accordingly we are of the view that there was no prejudice to medical scheme.”

We have highlighted that to them.

10 **ADV TEMBEKA NGCUKAITOBI:** Yes that's your response on the 24th.

MR VISHNU RAMPARTAB: Correct *ja*. So we have – I think in terms of the ICU as well, sorry the other issue was the psychiatric beds issue a point they had raised was Ascot Park does not have a licence for psychiatric beds, psychiatric patients as we know it requires specialised facilities to treat them, I think most facilities admit patients on a voluntary basis but even so those facilities need to have certain special requirements for psychiatric facilities and Ascot Park did not have those specific requirements. And the procedure was effectively is that if there were no beds available at City Hospital and a psychiatrist was wanting to
20 admit a patient and Ascot Park did have beds then we would make a request to the scheme, we were fully aware that Ascot Park did not have a licence and I'll present it to you a little later as well, and that on the motivation they will grant us consent for a limited stay subject to that patient being transferred out at a later stage. So the scheme was fully aware of that information.

ADV TEMBEKA NGCUKAITOBI: Yes I just want to finalise this FA11 because it's got two further points I want to explore with you. So in its LOS, what is LOS?

MR VISHNU RAMPARTAB: Length of stay.

ADV TEMBEKA NGCUKAITOBI: Length of stay yes now that's the over servicing complaint.

MR VISHNU RAMPARTAB: Correct *ja*.

ADV TEMBEKA NGCUKAITOBI: Yes now they say here:

10 “We advised and demonstrated to you through records of our system that such consults were never in our system.”

So remember they told you then that there's no record of the consults.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: *Ja* that's why they told you in their letter of 19th July.

20 “Save for pathology and radiology claims subsequent to our meeting we became more worried and concerned about exactly some behaviour by such healthcare practitioner only on admission claims associated with your facility. To this end our position hasn't changed and we stand by the contents of our letter.”

So does it mean that at that meeting of the 10th you in fact failed to show that the allegations about length of stay were unsubstantiated?

MR VISHNU RAMPARTAB: So remember this is post his initial letter of the 1st – his e-mail of the 1st at which stage we had not yet submitted our

response, this is post, he sent us the letter and I met him at the airport with some of the samples presenting the evidence available and I think I alluded to the fact that unfortunately he's not going to pick up those consults where those patients ... (intervention).

ADV TEMBEKA NGCUKAITOBI: Specific consults.

MR VISHNU RAMPARTAB: Where they paid cash and he's again alluding to the fact on that point, despite my having mentioned to him, that we had the evidence to say these patients were consulted, because I had actually personally spoken to those GP's that said I saw this patient on such and
10 such a day and that information is then presented in the subsequent correspondence that I presented. So even before having seen the evidence he has made a call that you haven't presented the evidence.

ADV TEMBEKA NGCUKAITOBI: You see where he is going is the last paragraph, he says:

“As indicated before we are a bit perturbed by the length of period that lapsed between our first interaction and now yet to respect your endeavour to satisfy yourself we've highlighted the issues before settlement could be reached. We really appreciate your cooperation thus far
20 but may we appeal for the matter to be expedited.”

So this thing has now moved from I want information to I want a settlement.

MR VISHNU RAMPARTAB: Correct so if you look at it I mean the first time we got any schedule from them was literally the 1st August. So from the 1st August, I met him on the 10th August at the airport with some

information and then he pushes and say he wants settlement in the matter and then within a few days thereafter I had then submitted a detailed schedule on a case by case basis trying to explain the information.

ADV ADILA HASSIM: And you're going to come still to the 24th August?

MR VISHNU RAMPARTAB: *Ja.*

ADV ADILA HASSIM: Okay but at the meeting on the 10th August where you attempted to address the concerns that were being raised, was it at that point that he said he does not want to see the evidence of the referral – doctor's referral, was it at that point or did you explain to him
10 then that it was a cash based ... (intervention).

MR VISHNU RAMPARTAB: I did show him a few to say this is, I spoke with ... (intervention).

ADV ADILA HASSIM: Because he doesn't seem to reflect that in this letter ... (intervention).

MR VISHNU RAMPARTAB: That's exactly it.

ADV ADILA HASSIM: That that is an explanation for why it's not in the system.

MR VISHNU RAMPARTAB: The unfortunate thing is no matter what explanations we gave they were not interested in any of the explanations.
20 At the meeting I said I've got samples, I actually carried the admission notes or the referral notes of those GP's that referred those patients to hospital for those days and they said because they could not pick it up on their system they did not see that as valid.

ADV ADILA HASSIM: But were they concerned with the particular healthcare practitioner?

MR VISHNU RAMPARTAB: They didn't present that to me that time.

ADV ADILA HASSIM: So when they say exactly the same behaviour by such healthcare practitioner it's not a specific doctor that they're referring ... (intervention).

MR VISHNU RAMPARTAB: The sample that they gave us were a few practitioners, it wasn't specific.

ADV TEMBEKA NGCUKAITOBI: Then can you just explain why is a scheme unable, just for our understanding, unable to pick up outpatient consults?

10 **MR VISHNU RAMPARTAB:** So what happens is, well firstly Ascot doesn't have an outpatient facility, so these patients would normally go see a GP in the vicinity where they live and that GP would then see them. Unfortunately they don't have an outpatient benefit on the scheme, that practitioner would charge them cash. Now that transaction is not going to appear on any record of Medscheme, the only time it will appear if that patient has a medical savings and if the practitioner submits an account the scheme will then pay that funds out of the medical savings benefit or the outpatient benefit, that's the only time it will come up on the Medscheme record. The fact that it did not appear doesn't mean
20 it didn't happen and in the evidence that I had circulated in the next letter I specifically mention that this patient was seen by the GP on that specific date.

ADV TEMBEKA NGCUKAITOBI: I mean if you tell the scheme, I presume if you say to a scheme the reason you don't have the record is because it was outpatient and the next logical thing you would expect is that they

will go to that doctor and ask did you in fact see this patient.

MR VISHNU RAMPARTAB: Exactly.

ADV TEMBEKA NGCUKAITOBI: Anyway look I tried to stop us from directing your evidence so you can take us back to where you were and then go through the way you prepared it.

MR VISHNU RAMPARTAB: So what I've done is I think on the Ascot matter I've just tried to highlight the key areas they had identified as reasons for the claw back. So I think the one was obviously the hospital length of stay and this was specifically Medscheme Forensics could not
10 pick up charges for consultation by the referring GP or the admitting specialist on their system for the initial referral or consult, I think it's the point we've been debating all the time. It's that doctors may in their discretion, depending on the circumstances of the patient decide to charge a patient for outpatient consult, in some cases they might do it free.

In the sample of cases they had provided to us many of the doctors had charged the patient cash as I mentioned and in some of the cases the surgeon that they mention he had treated those patients on a medical basis first and then taken that patient to theatre on day three or
20 four. Now from what I understand is when patients are taken for surgical procedures the surgeon is only allowed to charge for the surgical procedure as one charge, he's not allowed to charge for his consults thereafter or before. So this particular doctor had not charged for the medical consults and that's why they didn't see it. In my documentation I had submitted as well I highlighted to say that he did see the patients,

the evidence is there in the file, and he doesn't – the fact that he didn't charge for those consults doesn't necessarily mean he didn't consult those patients.

The fact that Medscheme could not pick up evidence of payment of the consultation on their system does not mean that these consults did not occur or make the admission fraudulent. That's the point I was trying to make.

ADV TEMBEKA NGCUKAITOBI: *Ja* I mean that's the point at page 249 of your ... (intervention).

10 **MR VISHNU RAMPARTAB:** Submission, correct *ja*.

ADV TEMBEKA NGCUKAITOBI: *Ja* I mean you went through each of those patients explaining ... (intervention).

MR VISHNU RAMPARTAB: That's correct *ja*.

ADV TEMBEKA NGCUKAITOBI: When they were seen by which doctor for how long and for what.

MR VISHNU RAMPARTAB: That's correct.

ADV ADILA HASSIM: And that was from your follow up with the doctors involved so you went and did the ... (intervention).

20 **MR VISHNU RAMPARTAB:** So what we did is we actually picked up the information from our patient files and in some cases we actually called those doctors, the GP's in particular to find out when did you see this patient, what we did we actually spoke to the specialist first and said if we didn't have a letter on file from which GP that patient came we then spoke to the specialist and said who referred the patient to you, the specialist said I was referred by a particular GP. We went back and

spoke to the GP on what date did you consult, and we've picked up that information this is what we put to – and my view is this should actually have been conducted by, should have been verified by Medscheme because had they done that they would have been able to verify the information.

The second point they had raised around Ascot Park was that patient ... (intervention).

ADV ADILA HASSIM: Sorry Mr Rampartab one just last thing, on the 10th August did you and Medscheme discuss settlement or were you at that point saying that there's no basis whatsoever?

MR VISHNU RAMPARTAB: There was no basis and the meeting of the 10th I literally just – he mentioned that if you're in Johannesburg if you have some time please make yourself available to discuss some matters. So I was in Johannesburg for a meeting so I said I'll meet you, I carried those sample of cases and I said let's meet and that's all I was there to present the evidence of the sample that I had identified. It wasn't meant to be a detailed meeting it was just some preliminary discussions. Preliminary investigation ... (intervention).

ADV ADILA HASSIM: But it wasn't discussion of settlement?

20 **MR VISHNU RAMPARTAB:** No.

ADV ADILA HASSIM: At that meeting of any sort?

MR VISHNU RAMPARTAB: No such thing, no such thing.

ADV TEMBEKA NGCUKAITOBI: The one thing I – I'm sorry to take you back to this, you know if you look at how, so if I'm a scheme and I'm conducting an investigation and I say look this looks you know

problematic I'll give you a sample you then go and do the exercise, you phone the doctors, you visit the doctors you give me the full data and now I go to page 263 and I'm looking for the answer to what they say about paragraph 3 of your letter and they just don't address it at all. In paragraph 5 they say:

10 "We wish to repeat and emphasise our position as articulated to Vishnu a couple of times with our airport meeting being the latest. Once again we come on record to state that claims on our system do not justify LOS as indicated in our initial correspondence. Trends of similar kind of admissions emanating from your facility without claims justifying such LOS is alarming and highly unacceptable. Ascot Park has no casualty and is supposed to admit patients for scheduled procedures without exposing schemes to unwarranted LOS."

 Thereafter they say:

 "As informed by the a foregoing we have decided to institute a Section 59(3) recovery as per our initial correspondence."

20 So it strikes me that you know you start an investigation, you want particular facts, you get those facts and you don't respond to them, you don't say there's a problem with the facts, you just assert the conclusion you started with in the first place.

MR VISHNU RAMPARTAB: Correct. The other point they raised was obviously the issue around the three days and longer and I think that's a point that you alluded to exactly now is that we've provided the evidence

and they failed to actually engage those doctors. I think the point that I made on the bottom of the slide is that in the City Hospital matter after a lengthy appeals they then came to us and said let's sit down and look at case by case. This was the first time that they came to us with a clinical person as well that we could present the case, present the evidence on a case by case basis and during that presentation there was no evidence found of any fraud on the part of the hospital because we were able to present each case. Subsequent to that meeting they confirmed that they had found no evidence of fraud on the part of the hospital and
10 unfortunately in the correspondence they had sent to us when we were engaging in settlement they indicated that they had made positive findings on 21% of the sample. To date they have not provided us with the details of that 21%.

ADV TEMBEKA NGCUKAITOBI: What is a positive finding?

MR VISHNU RAMPARTAB: So positive finding in my view, my thinking would be is that they've identified some kind of fraud or incorrect basis of charging because that's my understanding of Section 59 they have to be able to prove that there was some fraudulent act on the part of the hospital, and thus far nothing has been provided.

20 **ADV TEMBEKA NGCUKAITOBI:** I understand but I mean where does the 21% come from because my understanding of the story is that they tell you that there's a problem ... (intervention).

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: You say well I can't help you because until you give me the facts and they give you a sample, you research

each sample, you give them the answers.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: So there's no 21% because you've answered the 100%.

MR VISHNU RAMPARTAB: So what happened was they give us a sample of 67 cases right and we presented feedback on all 67 of those cases. Of the 67 cases although they didn't mention it at the meeting, they said 21% of the 67 cases presented they had findings where they were not happy about.

10 **ADV TEMBEKA NGCUKAITOBI:** And did they tell you which ones of that 67?

MR VISHNU RAMPARTAB: They have not provided that to us despite us requesting for it subsequently.

ADV TEMBEKA NGCUKAITOBI: But during this entire period your claims are suspended?

MR VISHNU RAMPARTAB: That's correct, it's been suspended since November – so Ascot Park was suspended in – so some background, Ascot was suspended in June and they had indicated that they value, they wanted a claw back was 3.9 million. They have clawed back 3.9 billion
20 and they reinstated payments at Ascot Park I think it was probably from October, thereafter we have been getting payments at Ascot but obviously the 3.9 has been held back. At City Hospital they have put payments on hold since November last year and to date we have received no payments at Ascot Park, sorry at City Hospital.

ADV TEMBEKA NGCUKAITOBI: City Hospital.

MR VISHNU RAMPARTAB: City Hospital *ja*. I think on the percentage as well if you remember they initially started with a percentage of 20% and it was based on their calculation right totally arbitrary in our view, and the 21% they still haven't presented the evidence to us as to what that 21% is. My understanding is possibly based on 21% of the 67 cases that they reviewed they haven't presented so I can't confirm, but we believe it's still arbitrary.

Okay I think the important point as well to note is that although they started 17.3 million which was their view that they were entitled to claim back, the value that's sitting now up until probably a few weeks ago is sitting at 58 million that they've clawed back – that they've held back that they're still holding.

ADV ADILA HASSIM: From Ascot Park?

MR VISHNU RAMPARTAB: From City. So remember they stopped paying so they originally believed they had 17.3 that they wanted to claw back and they haven't reinstated payments to City Hospital so we're now sitting with approximately 58 million that's being held back and these are payments that they have on their system shown as approved but are in dispute and being held back.

20 **ADV TEMBEKA NGCUKAITOBI:** Well for Ascot they took R3.9 million?

MR VISHNU RAMPARTAB: Already, correct yes.

ADV TEMBEKA NGCUKAITOBI: Jia but your other claims are reinstated?

MR VISHNU RAMPARTAB: That's correct *ja*.

ADV TEMBEKA NGCUKAITOBI: The 58 million is in relation to your ... (intervention).

MR VISHNU RAMPARTAB: City Hospital.

ADV TEMBEKA NGCUKAITOBI: *Ja.*

MR VISHNU RAMPARTAB: The other point that Ascot, I've mentioned this already, was the psychiatric patients being admitted and I explained the fact that the normal process is psychiatric patients are admitted at City and only in the odd occasion when beds are not available they do then get referred to Ascot Park and I've said here that Medscheme have always been fully aware that Ascot Hospital does not have psychiatric licence and patients admitted to Ascot are only based on motivations from
10 the doctors. In addition certain cases have been – in certain specific cases where the doctor required additional length of stay they would motivate for it. And what I've done on this here is I've actually put up it's a very fine slide but this is a document that you see there that this is a document that's on the Medscheme UMS system you'll see that the feedback it's highlighted there in sort of purple they say:

“Good day, please note that the facility is not licensed to admit mental healthcare users only two nights and three days can be approved.”

This is actually on the Medscheme system and from the
20 Medscheme case management. So they're fully aware that Ascot does not have a licence and when they grant authorisation this is based on information that's been submitted.

ADV TEMBEKA NGCUKAITOBI: Sorry what is the meaning of this, if you have no rights to admit a mental patient why are you admitting them?

MR VISHNU RAMPARTAB: So that's the point I tried to make earlier on

is that when there's no beds available and a patient is requiring admission the psychiatrist would then motivate specifically that he's requesting for authorisation for a day or two whilst they await transfer to another hospital. So in those specific circumstances only then they would grant – Medscheme would be motivated by the psychiatrist they would grant authorisation. This is an example ... (intervention).

ADV ADILA HASSIM: But why would they, I understand what you are saying but what they are saying is please note that you're not licensed.

MR VISHNU RAMPARTAB: Correct but they're saying that is
10 ... (intervention).

ADV ADILA HASSIM: Therefore we will only approve two out of three.

MR VISHNU RAMPARTAB: That's correct.

ADV ADILA HASSIM: But if you're not licensed they should approve none.

MR VISHNU RAMPARTAB: Exactly.

ADV ADILA HASSIM: Or all if it's based on clinical support.

MR VISHNU RAMPARTAB: So I think it's to clarify your point as well is
20 firstly that because there's no beds available and the psychiatrist believes that this patient needs to be admitted they have on motivation of that specialist said okay we're allowing you to admit so this is the Medscheme case management team fully aware that the hospital does not have a psych licence we're giving you temporary authority to admit on the basis that this patient would in a short space of time be transferred to a facility that is fully licensed and can accommodate psychiatric patients. So that's the basis, that's why it's a short term.

The point that I was trying to note here was that Medscheme is fully aware that the hospital does not have a psych licence and have granted us authority for those admissions on that basis yet Medscheme Forensics are now telling us that you have no licence and you're admitting and you're charging despite you're not having a licence. I think one of the points that we want to highlight is that one of the psychiatrists that practice at the JMH facilities was unhappy about not being able to admit some patients and treat patients at Ascot Park Hospital. He wrote personally to the Department of Health who was a regulatory body in terms of licences and the DOH Department then wrote back to us and that's the letter 2014 specifying that the Department of Health does not have any objection to Ascot Park Hospital admitting patients.

ADV TEMBEKA NGCUKAITOBI: Where is that it's a letter 2014? No but you remember that they told you that that letter had lapsed because your licence is an annual licence.

MR VISHNU RAMPARTAB: Correct so that is ... (intervention).

ADV TEMBEKA NGCUKAITOBI: So why we're dealing with things that happened in 2017 now?

MR VISHNU RAMPARTAB: Correct, so I think the principle is that from the hospital perspective we're fully aware that the hospital is not licensed for a psych facility, not licensed for psych beds and the general rule is all psych patients get admitted at City Hospital. In the odd occasion when beds are not available and the psychiatrist deems the patient requiring admission and on special motivation that patient is then admitted to Ascot on the consent of the scheme for a short term until that patient can be

transferred to a fully accredited facility.

ADV TEMBEKA NGCUKAITOBI: No but I mean the problem that both you and Medscheme are breaching the law?

MR VISHNU RAMPARTAB: As I said the principle is that these are emergency admissions and the priority is to facilitate in emergency care. Just to give some information on the type of patient that get admitted you get a patient that is being admitted, has got a medical condition and requiring a psychiatrist to see this is where patients of comorbidities and you would have a psychiatric patient that may require admission into a
10 specific type of facility. So you have a voluntary patient which has got a medical condition and needs to see a psychiatrist. Acute hospitals can manage those patients.

You also have patients who are involuntary patients and not in control of themselves and are required to be managed in specific facilities which literally can lockdown and have patients in isolation. Now the reason the Department of Health said that was that they do not have an objection to having voluntary patients being admitted and treated because patients do have comorbidities and then the example ... (intervention).

20 **ADV TEMBEKA NGCUKAITOBI:** No I will understand it if the, why was the letter not renewed, the 2014 letter from the Department of Health?

MR VISHNU RAMPARTAB: We didn't see it necessary at the time because we were not admitting psychiatric patients on a regular basis to Ascot.

ADV TEMBEKA NGCUKAITOBI: I mean I just wonder what value we

should give to your agreement with Medscheme that even though you are acting in breach of the regulations you should still be paid.

MR VISHNU RAMPARTAB: So I think the important point is that I agree that the hospital does not have a psychiatric licence and I explained that these are emergency conditions where the doctor motivates for it. The scheme, I think the point I was trying to make here the scheme is fully aware and on that basis have granted us authorisation so they should be paying the account because they granted the authorisation knowing full well that we don't have the licence.

10 **ADV TEMBEKA NGCUKAITOBI:** So your point is you cannot have a scheme on a clinical side saying to you, you can admit the patient because it's in their interest despite whatever the regulations say and you get the same scheme but on the forensic side saying I'm punishing you for an agreement you reached with my clinical people.

MR VISHNU RAMPARTAB: Exactly the point, exactly the point. Because the point I was trying to make is the scheme is fully aware and this is just the evidence that they're telling us please note that ... (intervention).

ADV TEMBEKA NGCUKAITOBI: *Ja* I know but I mean your point is that it's not that they are aware it's that they have agreed ... (intervention).

20 **MR VISHNU RAMPARTAB:** Correct.

ADV TEMBEKA NGCUKAITOBI: Not simply being aware, it's that this is an agreement you've reached with them.

MR VISHNU RAMPARTAB: That's correct *ja*.

ADV ADILA HASSIM: And would the patient then be discharged after the two day – the limited stay or did it go beyond the prescribed stay?

MR VISHNU RAMPARTAB: So if the patient – if the authorisation has been obtained for three days and a bed is available in another facility that patient would then be transferred. If there are no beds available or if the admitting doctor believes that he wants to keep that patient in that facility he would need to then re-motivate to the scheme and then the case manager at the scheme would then approve the length of stay for that patient. So this is the case manager – a Medscheme case manager that is providing authority for this.

ADV TEMBEKA NGCUKAITOBI: *Ja* and I mean if they didn't want to pay
10 you they should have told you at the beginning that you shouldn't admit patients.

MR VISHNU RAMPARTAB: Correct.

ADV ADILA HASSIM: Is the Medscheme case manager a medical doctor or a psychiatrist?

MR VISHNU RAMPARTAB: No they're not, I think they have – they vary between admin people and nurses and in cases where they need to refer information they do escalate so if they have a particular case where they need to get advice on they have a panel where they have medical doctors that sit on.

20 **ADV ADILA HASSIM:** So the decision to approve the admission of a psychiatric payment to a hospital that doesn't have a licence for psychiatric patient was being made by non-medical person on the medical scheme side?

MR VISHNU RAMPARTAB: I wouldn't know.

ADV TEMBEKA NGCUKAITOBI: Just tell me what is the proportion, I

mean I'm trying to work through to understand what to do about ... (intervention).

MR VISHNU RAMPARTAB: In terms of the value of the normal cases?

ADV TEMBEKA NGCUKAITOBI: *Ja* what's the proportion ... (intervention).

MR VISHNU RAMPARTAB: So I think the sample they had given us were two or three cases and you know; sorry can you recall how many cases we had in total for psych ... (intervention).

ADV TEMBEKA NGCUKAITOBI: Well I mean we've got 67 cases.

10 **MR VISHNU RAMPARTAB:** 67 were the total ... (intervention).

ADV TEMBEKA NGCUKAITOBI: *Ja* that's the total.

MR VISHNU RAMPARTAB: City was 67 on the City Hospital this is the Ascot Park Hospital matter, I think we had very, very limited psychiatric patients I can actually check that and revert to you on that because we did extract that information. We found it strange that they were harping on this particular matter when the number of cases admitted was very, very minimal at Ascot.

ADV ADILA HASSIM: It wouldn't have amounted to ... (intervention).

MR VISHNU RAMPARTAB: It wouldn't have ... (intervention).

20 **ADV ADILA HASSIM:** Of R3.9 million did you calculate how much ... (intervention).

MR VISHNU RAMPARTAB: We didn't – I'm sure we can get back to you with that information.

ADV TEMBEKA NGCUKAITOBI: So are you saying that even if ... (intervention).

MR VISHNU RAMPARTAB: It's not proportionate.

ADV TEMBEKA NGCUKAITOBI: There's disproportionately.

MR VISHNU RAMPARTAB: Exactly. So I think another point to elaborate is in terms of the authorisation process for patients being admitted the admission process is that a patient would come into the hospital with a referral note and generally the information is captured on the UMS system and the scheme has certain conditions when you capture information they give you a limited authorisation in terms of length of stay and then thereafter what would happen is if a doctor is requiring an extension of
10 length of stay they will have to motivate via our case management to their case management in terms of getting additional length of stay. In addition to that Medscheme have I think for longer than the last two or three years facilitated with the hospital to place case – their own case management teams at the hospital to be able to look at clinical information on patients that are admitted in the hospital and verify the reasons for admission and the patient care on behalf of Medscheme. And then we've provided an office for them, they have access to patient records, they walk into the hospital, they go into the facilities, they actually meet patients, they discuss with doctors to extract additional
20 information.

So I think this slide just talks around the high care but I think we've covered that so I'm not going to elaborate on that one again. I think this is just the last slide is in summary of the points that Ascot is that we therefore believe that a claw back ... (intervention).

ADV TEMBEKA NGCUKAITOBI: Just tell me that 3.9 that was clawed

back I mean they wrote you that letter – I can't – I think it's FA13, which then they said, listen we're now tired of talking to you.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: You were clawing back. What did they do? Did they just withhold pending claims?

MR VISHNU RAMPARTAB: So the way this works is that we submit our invoicing via Healthbridge and – sorry health partners, Healthbridge and MediKredit and what happens is Healthbridge and MediKredit is an electronic medium where we submit via the hospital, it gets into their
10 system and then it gets onto the Medscheme system. Those accounts are then verified by Medscheme and they will then pay the accounts.

What they have done on the Ascot is matter is, they verified payments and verified these accounts have been received and are due for payment. All they have done is they've said, we are calling back this amount of 3.9 million rand although they have approved for payment but they have not paid that amount.

ADV TEMBEKA NGCUKAITOBI: Alright so they just withheld
...(intervenes).

MR VISHNU RAMPARTAB: Exactly.

20 **ADV TEMBEKA NGCUKAITOBI:** Future payments from you.

MR VISHNU RAMPARTAB: Correct, *ja*.

ADV TEMBEKA NGCUKAITOBI: Now that is based on their calculation of the 21%.

MR VISHNU RAMPARTAB: No, that's based on the 20% of the admissions that have ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: The 20%.

MR VISHNU RAMPARTAB: 20%, this is Ascot ...(indistinct).

ADV TEMBEKA NGCUKAITOBI: You call this Ascot ...(indistinct).

MR VISHNU RAMPARTAB: This is Ascot ...(indistinct).

ADV TEMBEKA NGCUKAITOBI: Which , I mean I was looking for it here to see because the original sample they gave you, you answered each claim there.

MR VISHNU RAMPARTAB: Exactly.

ADV TEMBEKA NGCUKAITOBI: The 20%, where is the evidence of the
10 20%?

MR VISHNU RAMPARTAB: So they have never presented a schedule to say that our claim is 3.9 million rand and this is the list of cases that we have calculated to say that these claims are fraudulent and we are going to clawback. This 20% is just an arbitrary figure they believe is a number they've worked out and they haven't explained how they worked that out. It's a number they believe is inappropriate.

So I think it's for those reasons that we believe that the clawback by Medscheme forensic was inappropriate as they have not presented any evidence of fraud against the hospital nor any evidence of
20 over charge. So I think in addition there as you've mentioned there, they have not presented us with the details schedule substantiating their claim.

ADV TEMBEKA NGCUKAITOBI: I just wanted to ask you something else before you go to City. I mean just on the Ascot.

MR VISHNU RAMPARTAB: H'mm.

ADV TEMBEKA NGCUKAITOBI: I see the point you making about the improper application of Section 59 in the way of the investigation. Is there anything here that makes you believe that this has anything to do with racial profiling?

MR VISHNU RAMPARTAB: So I think what I present in the City Hospital matter you will see that some of the matters in City Hospital where doctors had admitted our hospitals also had admitted other hospitals and they had not applied similar rules to those hospitals.

ADV TEMBEKA NGCUKAITOBI: Okay but not on relation to Ascot.

- 10 **MR VISHNU RAMPARTAB:** I think even in relation to Ascot Park, if you look at our patient profile and the doctors that admit at that hospital, we believe that although we didn't initially consider this to be racial profiling seeing what's happening now in terms of this Section 59 investigation, we've seen more and more – being the evidence that have been representing we see that very similarly we seem to be targeted as a hospital group that is predominantly black owned and majority black patients and black doctors as well.

ADV TEMBEKA NGCUKAITOBI: But what is your comparator?

MR VISHNU RAMPARTAB: What is?

- 20 **ADV TEMBEKA NGCUKAITOBI:** Your comparator, who are you comparing yourself with?

MR VISHNU RAMPARTAB: So if you look at I mean in the Durban precinct the other hospitals that practice there are – they're listed groups.

ADV TEMBEKA NGCUKAITOBI: Alright, so when you say that you are

being targeted for Section 59 investigation, with that being targeted means being targeted in relation to x who is not being investigated.

MR VISHNU RAMPARTAB: Well we not aware of any investigation being carried out at the other hospitals. The listed groups which are predominately white owned are and the other thing is I think if on the City Hospital matter I'll explain to you on shareholding and why we feel that we've been targeted from that point.

ADV TEMBEKA NGCUKAITOBI: Alright, thank you.

ADV ADILA HASSIM: Sorry, before you leave Ascot Park, you responded
10 to Medscheme on the 7th of September.

MR VISHNU RAMPARTAB: *Ja.*

ADV ADILA HASSIM: To their letter where they said, we're now taking in – we are taking the money. You responded on the 7th of September to make it clear what your position is in relation to those 5 paragraphs or whatever that they came back to you on.

MR VISHNU RAMPARTAB: *Ja.*

ADV ADILA HASSIM: What was their response to you after 7 September?

MR VISHNU RAMPARTAB: I think as is usual with all correspondence,
20 nothing that we mention in our correspondence seem to be making any sense to them, they just bypass and say, we made our decision and this is it.

ADV ADILA HASSIM: So their response to your 7 September letter is not recorded anywhere, it's just that they then proceeded with the clawback.

MR VISHNU RAMPARTAB: Correct yes. Predominantly the clawback had already started from June, *ja.*

ADV TEMBEKA NGCUKAITOBI: No, in June they didn't clawback they just refused to pay.

MR VISHNU RAMPARTAB: Placed on hold, *ja*.

ADV TEMBEKA NGCUKAITOBI: *Ja*, they only clawed back later.

MR VISHNU RAMPARTAB: H'mm. I think the other point to you make is that the only other hospital that we're aware where there's been a Section 59 or such inquiries by Medscheme is the Capital Hospital in Durban and where they had a similar challenge in terms of Medscheme forensic investigation that is also a non-white hospital.

10 **ADV ADILA HASSIM:** Say that name again.

MR VISHNU RAMPARTAB: Capital Hospital. Okay, on the City Hospital matter, at the meeting – sorry, I just been reminded that Midlands Hospital in Pietermaritzburg is also a hospital that was under investigation and this is also black owned group, and that's the only two that I'm aware of.

ADV TEMBEKA NGCUKAITOBI: Capital is black owned.

MR VISHNU RAMPARTAB: And Midlands Medical in Maritzburg.

ADV TEMBEKA NGCUKAITOBI: Midlands is black owned.

MR VISHNU RAMPARTAB: *Ja*.

20 **ADV TEMBEKA NGCUKAITOBI:** And you are also black owned.

MR VISHNU RAMPARTAB: Correct *ja*.

ADV TEMBEKA NGCUKAITOBI: And you are the only hospitals from your knowledge that are subjected to Section 59's?

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: And specifically you say that you are not

aware of any investigations in relations to what you call the listed groups.

MR VISHNU RAMPARTAB: That's correct.

ADV TEMBEKA NGCUKAITOBI: Thank you.

MR VISHNU RAMPARTAB: On the Capital matter, when Medscheme approached the Capital group the matter was referred to the High Court at that time and shortly before the matter went to court Medscheme then came through and settled the matter with Capital. I don't know the full details of what the settlement was but I understand the matter was settled. I understand the majority claims were paid.

10 On City Hospital we received correspondence on the 16th of October from Medscheme Forensics expressing concerns around the admitting patterns of three doctor directors of JMH. Medscheme said that these doctors had a higher rate of admission and in their report they said 70% is compared to the City Hospital ER Unit at City Hospital where the admission rate was 10%.

 Medscheme stated that the ER Unit staff are considered to be independent and was therefore a fair comparison. In addition Forensic Unit was concerned that these directors were not complying with the article guidelines of the Health Professional Council of South Africa to
20 declare their financial interest in the hospital to their patients prior to admission into the JMH facilities.

 Based on that investigations for the period January 2016 to June 2018 and the methodology used, they were of an opinion that an amount of 17.3 million was considered as being inappropriate and possibly driven by perverse incentives. Sunny, can you just talk through the slide

please?

MR SUNNY GOVENDER: Thank you. So in terms of that ledger received we received two Annexure over that letter, there was an Annexure A and an Annexure B. In terms of Annexure A which you've got on the table there, this is what we understand to be the implication that 70% of admissions were direct admissions by the three doctors. What we were able – there was a list of the cases – case authorisations which we then used our system to pick up the case numbers and we were pulled out, reviewed the patient files to understand whether this was 70% direct
10 admissions meaning straight from the specialist into the hospital.

On review of the files we actually – on majority of the files – Emergency Response Casualty Unit, instead that's the word that they used in their correspondence, okay. So we found that the 70% was grossly overstated majority of the files had referral letters from the GP's in there. So assumption is that this cause a similar conclusion of the GP's that when they charge cash, they not picking up on the billing information on their side. So we think the 70% was grossly overstated.

Annexure A was also provided. This listed 201 casualty consults sample by Medscheme of which they claim 21 cases were admissions
20 from the ER Unit. Once again, we reviewed these cases and concluded the findings were incorrect. From the 21 cases that they said we had direct admission from the ER Unit, we found that it wasn't related – very few cases related to that ER visit. In fact that ER visit admission only happened the following day meaning that the patient was seen, gone home and then came back into hospital for admission for whatever

reasons may be there.

What we then also found is that on our system because we have a difficulty when a patient comes for the ER visit. When a patient comes for the ER visit, we are allowed to charge a code called 302 which is an emergency consult that's basically for the use of the nurse and the cubicle for basic IV therapy or procedures.

So when a patient gets admitted after visiting the ER Unit on our system we can't bill a 302 code. So for City Hospital you will never see an ER billing code and then an admission billing so the tariff code which
10 they refer to as 58004 which is ward accommodation for a medical case.

So you would never pick up that. So the list, that's what we found a bit unusual that you give me a list of 302 billing codes and telling me you picked up 21 admissions from this code. So we found that very unusual and then they used that to conclude that 10% of the casualty visits result in admissions. So it's just that we couldn't find the logic in terms of the information they were providing.

Yes, I think that's perfect. So then just to clarify, I think if I can add a little bit more to the Capital matter it's just that I got a chance to speak.

20 **ADV TEMBEKA NGCUKAITOBI:** No, I just want to understand the – you know the letter they send you on the 16th of October.

MR SUNNY GOVENDER: Yes.

ADV TEMBEKA NGCUKAITOBI: Now was that the first letter in relation to City because the others were in relation to Ascot?

MR SUNNY GOVENDER: Yes according to my recollection that's the first

letter.

MR VISHNU RAMPARTAB: That's correct.

ADV TEMBEKA NGCUKAITOBI: Now if you go to 305 then because there's something I just don't understand in paragraph 6 and 7. So it says here;

10 “The admission records of City Hospital reveals that only 21 out of randomly sampled 201 admissions emanated from each ER Unit whereas the vast majority emanated from rooms of directors of JMH as per paragraph 1 above.”

Then they say ...(indistinct).

“For the same period and number of Medscheme members serviced only 608 871.50 of the quantum was paid by Medscheme for City Hospital's ER Unit.”

Now if you look at this paragraph 6, what does this mean, 21 out of a randomly sampled 201 admissions emanate from the ER Unit.

20 **MR SUNNY GOVENDER:** So that was a confusion that we also got a bit confused because it says admissions, if you selected a sample of admissions in my mind, it's a patient I admitted into hospital so you picked up a sample and off that you've picked up 21 cases that came from the ER Unit. Or on the schedule that we were sent, you sent me a list of my ER Unit billing which was only ER Unit visits, it wasn't actually admissions so maybe the word admission or consulting in the ER Unit is what they were saying – trying to say on their assumption.

But I reviewed the 21 cases of which they said 21 of those cases

resulted in admission and we could only pick up very few admissions which were actually subsequent days so we actually for the 21 cases we not code, we didn't pick up any information in our system that said that these cases were actually admitted to our facilities.

ADV TEMBEKA NGCUKAITOBI: And then this paragraph 7 for the same period and number of Medscheme members serviced only 608 000 of the quantum was paid by Medscheme. I don't understand this.

MR SUNNY GOVENDER: I think here they make reference to the fact of the 302 code they paid 608 000 for that period. So I think the one thing
10 you also want to notice is that we actually didn't charge the 302 code when we admitted patients into the hospital via casualty so that actually was a saving to the scheme.

ADV TEMBEKA NGCUKAITOBI: So is that number then to be compared with paragraph 8?

MR SUNNY GOVENDER: So paragraph 8 was for these three doctors, they have listed their practice numbers and one is a multi-practice number there as well.

ADV TEMBEKA NGCUKAITOBI: Because paragraph 8 starts off by saying in comparisons which means what you do, you look at 6 and 7 and
20 compare with 8.

MR SUNNY GOVENDER: Yeah. And here they picked up the code 58004 medical admissions accommodation and they can't come up with that total value for those cases.

ADV ADILA HASSIM: Then you do have a response in November directly to this letter.

MR SUNNY GOVENDER: Yes.

ADV ADILA HASSIM: And the membership, the doctors who are directors. The director doctors before them.

MR SUNNY GOVENDER: Yes, that's correct. I think Vishnu will take you through more on that response quite a bit.

I think if I can have the opportunity just to add a little bit more to the Capital matter that I was aware of. So the matter did go to High Court and there was settlement before that and I think more of 90% of the claims were paid back to Capital. And then Capital challenged them on
10 the Section 59(3), so just to clarify that.

ADV TEMBEKA NGCUKAITOBI: So what do you mean challenged?

MR SUNNY GOVENDER: Challenged Medscheme on the ruling on the Section 59(3).

ADV TEMBEKA NGCUKAITOBI: And the High Court said?

MR SUNNY GOVENDER: Before my understanding before it went into High Court, it was paid off.

ADV TEMBEKA NGCUKAITOBI: I see so this was settled, not decided ... (intervenes).

MR SUNNY GOVENDER: Settled but more than 80% of that was settled
20 by Medscheme.

ADV TEMBEKA NGCUKAITOBI: Alright anyway but you are not involved with Capital

MR SUNNY GOVENDER: No, I just had a little information.

ADV TEMBEKA NGCUKAITOBI: Or you just *ja*, giving us interesting information. Alright, thank you. Can you come back then to this issue, *ja*

City *ja*?

MR SUNNY GOVENDER: Okay, these further questions and responses, Vishnu will take you on that.

ADV TEMBEKA NGCUKAITOBI: Now we had moved on now to your response in November. Just to try and understand what exactly was the nature of the complaint.

MR VISHNU RAMPARTAB: So in the letter that we sent to them on the 6th of November it was mainly to get them ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: I mean it is notable of course that the
10 14th of June.

MR VISHNU RAMPARTAB: *Ja*.

ADV TEMBEKA NGCUKAITOBI: By the time you were informed, they had already decided to withhold payments.

MR VISHNU RAMPARTAB: That was on the Ascot matter, yes.

ADV TEMBEKA NGCUKAITOBI: On the Ascot but in October when they were dealing with City.

MR VISHNU RAMPARTAB: *Ja*.

ADV TEMBEKA NGCUKAITOBI: They specifically gave you right to a hearing said, tell us why we shouldn't withhold payments.

20 **MR VISHNU RAMPARTAB:** Correct.

ADV TEMBEKA NGCUKAITOBI: That is what is ...(intervenes).

MR VISHNU RAMPARTAB: Correct, that's correct *ja*.

ADV TEMBEKA NGCUKAITOBI: *Ja*.

MR VISHNU RAMPARTAB: So that's when we responded and in the letter we tried to articulate and give them a background in terms of JMH and the

history of JMH and the doctor shareholding. In particular I think which I've really eluded to earlier on is in terms of the shareholding, the doctors and the breakdown to shareholders in particular that the JMH group is no longer strictly a doctor owned entity and that it is owned by a new majority shareholder owning 51% or the balance of the 49% being owned by a company called JMH doctors SPV. And of that we have approximately 500 doctors who have historically been involved in the organisation. Some of them have now moved on and retired, may I say the majority of them are now retired and at this stage we probably have
10 about 15% of those doctors that are still actively in practice.

We then expanded in that letter on the three doctors that they had particularly – doctor directors that they had particularly referred to the one being Dr Chris Jack and Dr Chris Jack was only a director for a limited period of time. He practices from rooms at Durdoc Hospital, rooms that belong to him and that he purchased for himself. And he's a very busy HIV specialist and receives referrals from throughout KZN and naturally he's admission profile for patients would be higher in comparison to somebody because he's seeing patients that have come to stage to him after they have been consulted by their GP's and are quite
20 sick so naturally his admission patterns would be higher. So that's what we try to allude to on that one.

And the second doctor they mentioned was Dr RL Bhoola who practices from – who's been, Dr RL Bhoola is a physician who practices from rooms at City Hospital and from Entabeni Hospital. He's part of a nine-man practice that has rooms at many hospitals say in the Durban

area and he's also a very busy practitioner.

The third person they mentioned was Dr IS Vawda who's a general surgeon. Dr Vawda, the only practice he runs was his rooms at City Hospital and he was one of the founding members of City Hospital. And being a surgeon we explain that generally when patients come to him they have already in most cases been pre-diagnosed as requiring surgical intervention and then being referred on that basis.

So all of that information was presented to them and we advised that these doctors although they were shareholders, they had – they were
10 practising at other facilities and they had no perverse incentives to admit at the hospital.

We had in that same letter also requested for a meeting at which meeting we could then present in more detail and have a discussion around that with them. A meeting was then scheduled for the 14th of November I think it was.

Sorry, at that meeting the JMH team comprising Sunny Govender, myself, Dr Reddy, Dr Thabethe, Dr Bhoola and in fact we invited Dr Chris Jack and Dr Vawda to that meeting as well to understand really what their concerns were and presented again the background in
20 terms of the JMH shareholding and our view that the doctors were not incentivising in any way and explained the nature of patients that we see.

In addition we did mention to them that most patients that were accessing healthcare services in the central Durban precinct where from the lower and middle income communities who relied on public transport and found a doctors room and hospital in the area easily accessible to

due to the proximity around the major bus and taxi routes, hence the reason for admission by these doctors to the specific facilities.

I think the point that I was making was that one of the doctor directors mentioned in the claim of 16 October also has rooms and consults from hospital which belongs to (indistinct) registered company which facilities approximately 5 k's from City Hospital and consequently most patients consulted at that facility according admitted at those facilities only.

He is coincidentally also a shareholder of that facility but has not
10 been requested or enquired about whether he has made any financial declaration to his patients in that regard. I think that's the point I was trying to allude on earlier.

At that meeting Mr Marabo who was representing the Forensic Unit advised that they had conducted similar investigations into the other hospitals in the group and unfortunately it had similar patterns where they found that doctors where – they had doctor directors who doctor shareholders that were admitting and their view was that they view this was being perverse.

Just to on the previous slide, the doctor I mentioned was Dr RL
20 Bhoola who's the chairman – who was the chairman at that time and the hospital of note was the Entabeni Life Healthcare hospital. At that meeting Mr Marabo advised that they had carried out an investigation or were busy investigations into the other hospitals within the group and they had found similar patterns without providing any evidence to us. They advised that the intention was for them to place accounts –

payments on those hospitals on hold as well. And their view was that if they could reach a settlement with City Hospital they would then place the matter on hold.

We at the meeting, then asked what would your view be would be the appropriate settlement and they indicated that the value of 17.3 million was the value that they would consider to be appropriate. At this stage of the meeting we felt that the approach by Medscheme Forensic was actually bordering on extortion and we requested that we could not make any decisions at the meeting and would need to obviously caucus
10 in that regard and provide feedback.

ADV TEMBEKA NGCUKAITOBI: Remember that at the beginning what they wanted was 17 million, their calculations.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: And so that suppose is a discount if they say well give us 13.2 million.

MR VISHNU RAMPARTAB: No, this is still the 17 and they said if they receive the 17 for City and we settle on that matter, they would consider the matter as being closed for the entire group.

ADV TEMBEKA NGCUKAITOBI: Okay so the 13 would be for the whole
20 group?

MR VISHNU RAMPARTAB: 17.

ADV ADILA HASSIM: 17.

MR VISHNU RAMPARTAB: They still said the 17, *ja* correct, *ja*.

ADV TEMBEKA NGCUKAITOBI: Okay.

ADV ADILA HASSIM: But did Medscheme report the doctors to the

HPCSA because what they were alleging was a violation of the HPCSA guidelines.

MR VISHNU RAMPARTAB: Rules, correct. They, we not aware of them having done that.

ADV ADILA HASSIM: Did JMH lay a complaint with the Council for Medical Schemes in relation to this behaviour of Medscheme.

MR VISHNU RAMPARTAB: So unfortunately at the time in hindsight now we become aware that was one of the avenues of our approach but at the time we appoint – obtained legal counsel and found and we found that the
10 manner in which Medscheme were approaching this required urgent attention and then that's why we decided to go on High Court.

On the issue of the doctor shareholding, just to elaborate and I mentioned this point in the earlier submission that 51% is now in the equity investor and approximately 15% is now owned by doctors that are practicing.

As madam and the chairman bore view, this is an attempt to extort the settlement by the Forensic Unit a decision was taken to obtain legal advice on the matter and based on the advice received as a last resort proceeded with a claim by the High Court. A copy of the papers
20 have been submitted and which you got.

We were then approached I think whilst we were waiting the High Court matter, we were waiting for a date for the matter to be heard. We received a call from Paul Midlane who's the General Manager of Medscheme Forensics. I think Sunny it was some time in – was it June sometime – 26th of June, when our chairman Dr Bhoola received a call

from Paul Midlane says that could we ...(intervenes).

ADV ADILA HASSIM: Of this year?

MR VISHNU RAMPARTAB: This year, yes. Could we perhaps discuss this matter and try and resolve the matter out of court. I think that's always been our intention that we wanted to resolve the matter and unfortunately because we weren't presented with adequate evidence we could not settle the matter. And he then requested we facilitate a meeting, we were only too happy to facilitate. We consulted with counsel and were advised that to engage with them on without prejudice basis and
10 then we then facilitated a video conference which took place a few days later.

Alright, I think this is the slides here just show the background in terms we had that video conference. At the video conference Medscheme again reiterated their concerns that we had doctors who were shareholders and directors and were admitting into the hospital and they believe based on the investigation that the doctors admission ratio were disproportionately high again without providing evidence and the length of stay too was inappropriate and they would like to present this evidence to us so that we could then resolve the matter. We said we quite happy to
20 engage with you and sit down with you and discuss the matter.

So we then agreed that they would send us a sample of cases that they had identified as being inappropriate admissions. They then circulated two schedules making up 67 cases to us at which we went through on a case by case basis between the – our group nursing services manager and extracted information from the patient files. And

we then present – prepared a report which we presented to them on a case by case basis on the 16th – I think the 15th and 16th of August.

At that meeting we requested that they arrange to have present from their side a medical practitioner who could understand the rational in terms of the medical cases because thus far had been dealing with McDonald and he's not a medical person and myself being not a medical person, we insisted that we have that. So they facilitated for Gregory Pratt to be present and from our side we had our group nursing services manager represented. We also had – Dr Bhoola was there and Dr 10 Thabethe and Dr Thesi Reddy that presented on a case by case each of those matters.

At the meeting they indicated that they had found no indication of fraud on the part of the hospital and were happy that we had presented the information. And they also indicated – and they're all saying – indicated that there were obviously no incorrect charges on the part of the hospital because there was no evidence presented on incorrect charges. They did indicate at the meeting that ...(intervenes).

ADV KERRY WILLIAMS: Well, what did they adopt, what was the position of the doctor that ...(intervenes).

20 **MR VISHNU RAMPARTAB:** He went through it, case by case and I think on certain case ...(intervenes).

ADV KERRY WILLIAMS: This is the doctor for Medscheme.

MR VISHNU RAMPARTAB: For Medscheme, Gregory Pratt, he went through it case by case and then certain cases, the information that was presented by the nursing services manager obviously is with

limited knowledge, he then interrogated and asked further questions and the doctors that represented JMH that were present at the time gave further input on those matters and were able to present and explain those matters.

Some of those matters unfortunately were not relating to the doctors in questions that were listed being Dr Chris Jack, Dr Vawda and Dr Bhoola and were relating to other doctors were not present at the meeting and we could not obviously present a response from those doctors because they were not invited to the meeting.

10 **ADV TEMBEKA NGCUKAITOBI:** Can you just tell me; I mean if you just – take you back to your exchanges with the Medscheme around the settlement at page 413. My understanding is that you had had a meeting sometime in November.

MR VISHNU RAMPARTAB: *Ja.*

ADV TEMBEKA NGCUKAITOBI: Where the issue of the settlement was raised but you asked for time to caucus and your view was that it was extortion but on the 30th of November he then writes to you and says the following. He says:

20 “We note with disappointment that more than ten working days have lapsed since we had a formal interaction and up to this end we still have no settlement proposal from the facility.”

MR VISHNU RAMPARTAB: *Ja.*

ADV TEMBEKA NGCUKAITOBI: “As informed by the a foregoing, we wish to advise as follows. We are in a position of

strong belief that we afforded the facility more than ample time to consider the matter. We consider close of business today as a due date for any submission. Should we fail to receive same we will proceed to finalise the matter as clearly laid out during our meeting.”

I mean, it seems to me that there’s pressure being put not so much to establish the facts but to put money on the table.

MR VISHNU RAMPARTAB: Exactly, that’s the point. I think a point to
10 note as well is that at this stage they had not provided us any specific cases of those doctors in question to say that these are the cases where we’re not happy about this particular clinical call on a doctor and we believed that the admission was inappropriate. There was no detail shared at that time. The 67 cases that they shared only came to us now in August – July/August.

ADV KERRY WILLIAMS: So there wasn’t a figure or was there a figure from their side?

MR VISHNU RAMPARTAB: So the 17.3 million was based on an
20 extrapolation of what they believed of 20% of the cases admitted by those doctors was the tariff portion of the revenue which they believe was inappropriate. So their view was that 17.3 million was ...(intervenes).

ADV KERRY WILLIAMS: After all the explanations that you provided there will still remain ...(intervenes).

MR VISHNU RAMPARTAB: This 17.3 was the point that was from their

first letter dated October and that's the figure ...(intervenes).

ADV KERRY WILLIAMS: So none of the responses that you provided in relation to the specific concerns that they raised did they take ...(intervenes).

MR VISHNU RAMPARTAB: Acknowledge, correct. And remember that this discussion of the 17.3 started before they even presented any evidence of cases where they found that there was inappropriate or fraudulent admissions.

Okay, so I think this slide kind of talks through the discussions
10 on that 67 cases that we had and I think the one point to note that it did emerge during those discussions that some of the queries that they had raised did result from a lack of adequate information on the part of JMH where our case management team had not provided adequate coding information or timeous co-information to the scheme.

So unfortunately, we found that we do have some – we have to acknowledge we do have some issues around resources and ability of the case management in terms of proper coding of the cases where the scheme can see the accurate clinical position of the patient but at no point did those – the lack of the information make any difference
20 because those patients were valid admissions and were not fraudulent admissions.

So in the 67 cases they presented we were able to then articulate them around the background and – so that was one of the things that came up at that meeting. Medscheme at the meeting advised that they had some concerns around the adequacy of the

admission criteria applied from the outpatient department and this again, after having gone through all of the cases, originally they said that they believed that the outpatient department, being an independent organisation, had probably more appropriate admission sort of principles and when they went through the files they came back and said they had some concerns that these doctors probably didn't have adequate admission sort of criteria before patients were being admitted and that in certain cases they found that patients were being admitted perhaps too soon and should have been diagnosed properly before as
10 an outpatient before being admitted.

Now one of the concerns that the outpatient department doctors have is when patients come to them particularly in the evenings, is that patient comes to you coming from an outlying area, reasonably unstable and presenting with conditions that in your opinion at the time as a doctor that you think you need to admit the patient. He obviously makes a clinical call at the time and admits the patient. The scheme is concerned that the patient is being admitted and some diagnostics only being done on the next day.

Now, unfortunately, looking at a case in hindsight is always –
20 it's fair and well to look at something in hindsight and say that the doctor could have made a call and this could have been done as an outpatient admission. But when the doctor is there and he's seeing the patient at that time it's his call and there's always going to be a judgmental difference between one doctor and the other as to whether should have been admitted or not and that's something unfortunately

none of us can really explain and make a categoric decision on.

So they expressed concerns on those and they said that in view of that they believe there have been some wasted costs on the part of the scheme and that they would request that the hospital consider that and make a proposal of settlement to the scheme.

At this particular stage they had not presented to us any number or list of cases that they believed or what quantum they believed would be an appropriate number that has been wasted in terms of cost on their behalf.

10 **ADV TEMBEKA NGCUKAITOBI:** I'll take you back to the correspondence from Medscheme, is at page 429. Look at what they said to – I think at that point you had appointed Minal Soni.

MR VISHNU RAMPARTAB: *Ja.*

ADV TEMBEKA NGCUKAITOBI: And this is how they respond to her and in paragraph 6, he says:

20 “Should JMH not wish to cooperate with the audit on behalf of medical schemes we suggest that they run a cash facility and charge members upfront. It will then be the member's duty to prove the validity of the claim.”

Now, I mean, if one reads this you get the impression that you refused to cooperate with the investigation.

MR VISHNU RAMPARTAB: So I think, you know for me, I think this has generally been the tone that had been carried even from the previous point that you raise is that for them it was that we're making

offer to settle this matter, come up with a settlement even despite having proven to us that these are the cases we found as inappropriate, we want you to settle, failing which we're now going to stop authorisations to the hospital and you'll now be treated as a cash facility and the patients can pay you cash and then claim from the scheme.

ADV TEMBEKA NGCUKAITOBI: Yes. And in the last paragraph it says

10 “We find the tone and attitude of your correspondence
 unfortunate as your client previously committed in
 writing to provide in full cooperation in order to bring
 finality to the matter.”

Now when they say full cooperation, there are two issues at stake. The one is the investigation which you've been providing them with, the facts.

MR VISHNU RAMPARTAB: *Ja.*

ADV TEMBEKA NGCUKAITOBI: The other cooperation is put the money on the table.

20 **MR VISHNU RAMPARTAB:** You see, if you look at all of my
 correspondence even on the Ascot matter, I have always been
 reconciliatory and said we want to cooperate, we've had a good
 relationship with the schemes and what you're bringing to us is
 something that we've not been aware of and we want to engage with
 you and to understand what your concerns are.

So, one, we can put corrective measures in place and if it's to do with something with a doctor where the doctor is off, out of bounds,

or whatever it is, we can engage with the doctors and explain to them what their concerns are. So we've never been non-cooperative.

ADV TEMBEKA NGCUKAITOBI: *Ja* and then it says:

“It would be advisable not to prejudice your client with poor ill-advised legal advice.”

And then it says:

“This is a matter of ethical and clinical best practice not to be confused with the legalise around statutory interpretation.”

10 But if you look at paragraph 2, they say:

“This matter is about Section 59(3) of the Act.”

Now they say no, it's not actually about the law, it's about clinical best practice.

MR VISHNU RAMPARTAB: We agree with that, *ja*.

ADV TEMBEKA NGCUKAITOBI: Now, I mean it seems to me there is – you can comment on this if you – you know, on the one hand it's the investigation which is I need the facts, you are giving them the facts.

MR VISHNU RAMPARTAB: *Ja*.

20 **ADV TEMBEKA NGCUKAITOBI:** And they obviously don't respond to the last set of the facts you gave here and they say well, you are not co-operating.

MR VISHNU RAMPARTAB: So I think, you know, on the City Hospital matter they had presented us some broad based facts on that letter, there were no specific details as to on a case by case basis that these are the cases that we find as being inappropriate, like they'd done in

the 67 cases eventually and which we've addressed. At this stage there was no information presented, it was just sort of a generalised statement they made on what they believed were inappropriate admissions.

I think our view was that we've been complying with all of their requests in terms of providing information and the view is that we've complied with all of that, they've now shifted the goalposts to something else which is relating to maybe the HPCSA regulation or whatever it is. We don't understand their rationale but they seem to be
10 shifting their goal posts all the time because even in the correspondence that we sent to them, when we respond they go back to the same points and respond on the same points without even considering the evidence that's been provided.

ADV KERRY WILLIAMS: You did make an offer of settlement at some point.

MR VISHNU RAMPARTAB: I think when they presented the 17.3, we believed that 17.3 was to some extent bordering on extortion. When they then had the meeting on the 15th and 16th ...(intervenes).

ADV KERRY WILLIAMS: Why to some extent bordering on extortion if
20 you didn't – you disputed that you owed any amount of the 17.3.

MR VISHNU RAMPARTAB: So I would think – I think if they had proved – they had provided evidence that there's fraudulent claims then we would obviously be engaging with them. At that stage there was no evidence to say how – and the reason I'm saying to some extent is because I've got no evidence to say its extortion. My view is its

extortion.

ADV TEMBEKA NGCUKAITOBI: I mean, I suppose the question is why are you considering settling a case that you believe – then I suppose you say you just want to get them off your back.

MR VISHNU RAMPARTAB: Exactly. I think if you look at the way this matter has been handled, you know, for an organisation like ourselves, starting with a claim of what they said was 17.3, they're now holding almost 16 million back, surely this is going to have an impact on my business and I think seeing the way that this matter has been
10 approached, we've incurred I think lots of management time trying to address the matter. The doctors would in their facility, because they've been aware that this hospital is under investigation, they to some extent are now of the view that perhaps we should not be admitting at these hospitals because they're under investigation and they could be compromised themselves.

ADV KERRY WILLIAMS: And what was the amount settlement proposal that you made?

MR VISHNU RAMPARTAB: So in terms of the negotiations on the settlement, this only came through after the meeting on the 15th and
20 the 16th where the scheme said that taking into consideration the fact that the outpatient department may have some admission patterns that may be inappropriate and resulting in a loss of the scheme. You put a proposal as to what you believe would compensate the scheme for these inappropriate admissions.

So we looked into it and take into consideration the fact that in

their letter they mention that there was 600 000 paid to the outpatient department. We looked at it and said as an arbitrary amount because we've already incurred so much of cost in this matter and strictly and without prejudice, without admitting liability on a commercial basis we offered 500 000. That was the initial offer that we made.

ADV KERRY WILLIAMS: And that was in respect – the whole series of concerns around the outpatient department was something that only came about this year.

MR VISHNU RAMPARTAB: Exactly. Remember in the original letter
10 they said that they believed that the outpatient department was an appropriate independent structure?

ADV KERRY WILLIAMS: Yes.

MR VISHNU RAMPARTAB: That the admission numbers were appropriate and here they contradicted themselves by saying that we have concerns around your outpatient department because we find this and this is wrong.

ADV TEMBEKA NGCUKAITOBI: So you say 500 000 was ... (intervenes).

MR VISHNU RAMPARTAB: 500 000.

20 **ADV TEMBEKA NGCUKAITOBI:** 500 – initial offer (indistinct – speaking simultaneously).

MR VISHNU RAMPARTAB: Was initial offer. They then wrote to us. Just let me get to that page. Sorry, I blocked it out on the screen because I thought it was maybe inappropriate to have it. So I think the way we presented this was that the 500 000 was made effectively as a

discount, not in acknowledgement sort of that we're writing off specific claims. We said that in lieu of settling the matter we would offer you a discount of 500 000. So even in the subsequent correspondence we've also said it's a discount.

So the Forensic Unit then wrote back to us declining that original offer of 500 000 and said that they had made positive forensic findings and 21% of the files of the 67 files that they had reviewed. Remember, prior to this settlement proposals they had not told us about positive forensic finding. It's only after we made the settlement they
10 said despite us having reviewed those files we still made 21% positive forensic findings and not details were shared.

They then came up with a proposal of 5.8 million as a full and final settlement for City Hospital. And again – so I think this was made on that – in the correspondence you see that it was made on the basis that if we're not able to settle they would the proceed with the stopping authorisations to the hospital and we would then be placed on a cash basis if we were not willing to accept that 5.8, *ja*.

And again at this stage the scheme had not shared the case specific information of that 21% that they alleged to have had positive
20 forensic findings on.

In an attempt to resolve the matter, we then went back to them and particularly with the threat that they had carried out some of the investigations at the balance of the group, we said that again, as a nuisance factor, that we would rather move on with the matter and we propose an amount of R3 million as a full and final settlement to date

including all cases that they had or claims that they allege to have up to end of August.

They then wrote back to us on the 13th saying that their view was that the R3 million did not compensate them for the losses which they believed they incurred and that they proceed with the legal process and we will be hearing from their attorneys of reference on each of the schemes.

ADV TEMBEKA NGCUKAITOBI: What does that mean that the matter will continue? They will institute a claim against you because they've
10 already withheld the payments.

MR VISHNU RAMPARTAB: Exactly, so ...(intervenes).

ADV TEMBEKA NGCUKAITOBI: So there's no claim for them to institute.

MR VISHNU RAMPARTAB: So my understanding is that they're going to continue holding back payments, right? Until the matter is settled in court.

ADV TEMBEKA NGCUKAITOBI: Until your own application to court has resolved.

MR VISHNU RAMPARTAB: Correct. So remember that ...(intervenes).

20 **ADV KERRY WILLIAMS:** They have recovered the money by this time, haven't they? The amount that they ...(intervenes).

MR VISHNU RAMPARTAB: Exactly. Their claim was R17.3 million. They're now sitting with R58 million which they have approved for payment and is sitting on their system as having been approved but they have not paid, right?

In their correspondence to us they said that they still have concerns about certain specific admission patterns and they still haven't presented that evidence to us and that's why they're alleging to hold because there's claims subsequent to May last year that they believe their entitled to.

ADV KERRY WILLIAMS: So there are new issues, in other words.

MR VISHNU RAMPARTAB: New issues. But, even so, I mean, in the 67 cases that they presented to us as evidence, only 21% of those they believed they still have a claim for, they haven't shared that with us
10 and we don't believe it's justifiable but they're saying that subsequent to that they still have claims but they're holding back now 3.5 times the value of that 17 million which is totally ludicrous.

ADV TEMBEKA NGCUKAITOBI: Can you just tell me something else, what is the – I mean, you've explained at the beginning that you're a black group as well, I mean, if you are owed R58 million, I mean, what is the impact of that on your operations?

MR VISHNU RAMPARTAB: So fortunately, Medscheme in terms of the proportion of our business, it's probably 10 or 15% – 10 to 15% of our business. We've actually had to go on to get overdraft facilities, to
20 utilise overdraft facilities for that and we've explained that to them as well. We've incurred additional costs and that came to now approximately almost R2.8 million in overdraft fees.

ADV KERRY WILLIAMS: Have any other Section 59 Investigations been conducted in relation to JMH? Any other schemes – by any other scheme, not Medscheme.

MR VISHNU RAMPARTAB: No. No. There isn't such thing. I think just a point to make as well in terms of the amount of money they're holding, R58 million, this is going to be extremely prejudicial. We do have overdraft facilities that we can get but we've going to get to a ceiling at some point in time and it's going to impact on our business. I think the second point is that because of this investigation, doctors are now afraid to admit to this facility because they believe that we under investigation and the schemes will investigate those doctors that are now practicing at these facilities. So they're now actually afraid of admitting at the facility and that to a fact is also affecting our business.

ADV KERRY WILLIAMS: The doctors?

MR VISHNU RAMPARTAB: Exactly.

ADV KERRY WILLIAMS: And the patients would have to pay upfront the Medscheme members.

MR VISHNU RAMPARTAB: So now – so what's happening currently is that – remember, we've continued on risk, on relationship in the interest of patient care with Medscheme to admit their members. The continue to give us authorisation, we continue to treat their patients and we continue to submit bills, they continue verifying those bills and agreeing that those payments are due to us but they're withholding their payment.

ADV KERRY WILLIAMS: So you don't ask the members for an upfront payment in respect of Medscheme?

MR VISHNU RAMPARTAB: We haven't done that. I think we do have an entitlement that we could actually go to those members and claim

those funds from those members directly but we chose not to because we know that most of those members do not have funds available to pay.

ADV TEMBEKA NGCUKAITOBI: Yes, I do want you to expand on that because you see the inquiry, I mean, has got both the racial dimension but when you say most of these members are unable to pay, what does that mean?

MR VISHNU RAMPARTAB: So as I mentioned earlier on is the patients that we see here are from lower- and middle-income
10 communities. Majority of them can barely afford their medical aid and when they have medical aid their assumption is that when they get sick and they need to get admitted to a hospital that their medical aid will foot the bill. In our circumstances we've applied for authorisation, they come to the doctor, we've applied for authorisation, we've treated those patients, they've been well, they've been discharged, we've submitted our bill in terms of the normal process that we'd be required to submit, they've been validated by the scheme, they've been placed on the system or the Medscheme to say that claims have been validated and due for payment but yet they have not paid.

20 These members that we're referring to, if we had to go for them, their bills will range from anything for one day which could be R2 000 or R3 000 to R30 000 or R40 000 or R100 000. Where are these patients going to get that money? For one, if we decide to sue them, they're going to have to now get an attorney to represent them. They're not able to do that. These are patients that are barely

affording their daily income – their daily expenses.

I think that the important point to note is that all of these claims have been verified on the Medscheme system, to say they've been verified. In terms of Regulation 6 they have 30 days within which to dispute the claim. We have submitted our claim as I said in terms of the normal process via the EDA system, they've been validated by Medscheme and they've been put on the system as being validated and due for payment. Had they had any concerns about those claims they should within 30 days come back to us, which they do sometimes, that
10 we believe that you've overcharged for this or you charged incorrectly for that and they do come back but in these cases, they had not followed that process.

Even in the 58 million that they are holding back, there are certain cases where we've submitted our bill and on certain items on those specific cases they chose not to pay because they – in terms of the rules, those amounts may not be payable, may not be chargeable or whatever and they've said that this is not chargeable and they would normally say that it's not chargeable under the rules and this is the code. But in these circumstances they have approved the payment and
20 the monies are being held back.

ADV KERRY WILLIAMS: So is it right to characterise it as – I mean, it's a blanket approach now to JMH to say claims that will come in will just not be – it's not that they're not approving the admissions or the treatment but claims will not be paid.

MR VISHNU RAMPARTAB: That's correct, so although they're giving

us authorisation, they're validating the claim when we submit the account and it's shown on their system as being approved for payment, they're just not making a payment.

So I think in terms of the review of the files, they presented the 67 cases and we've presented the evidence. They then came back and said we've got 21% of cases where we found anomalies, they have refused to give us any further details on those 21 cases and they said that we will go to court and present effectively case by case. That's what – they've refused to give us any further evidence of those matters
10 where they believe that they have anomalies.

ADV TEMBEKA NGCUKAITOBI: Thank you. Just tell me, when this was happening prior to the announcement of this panel, why did you not complain to the CMS?

MR VISHNU RAMPARTAB: Unfortunately at the time I wasn't aware that that was an option available to us and I think, as I said earlier, is that because of the manner in which this was being approached, we believe that – and from the fact that we had heard that the Capital matter had eventually to go to court before Medscheme Forensics release payment and we thought that that was the only way of getting
20 access to our payments. We did make an application on an urgent basis to the Durban High Court.

ADV TEMBEKA NGCUKAITOBI: To?

MR VISHNU RAMPARTAB: To the Durban High Court.

ADV TEMBEKA NGCUKAITOBI: Oh, I see.

MR VISHNU RAMPARTAB: *Ja.*

ADV KERRY WILLIAMS: Can you – if you're able to, can you tell us what your understanding – the interpretation of Section 59(3) is when it comes to the amount that is to be paid to the scheme? Is it correct – would it not be correct to say that it must be a quantified specific amount?

MR VISHNU RAMPARTAB: That's correct, that's my understanding and thus far Medscheme have not provided any evidence. And I think also they have to provide evidence of fraud on the part of – fraud or claims where the hospital is not entitled to and so far all the claims that
10 we've submitted have been verified on the system. They had not told us that you're not entitled to this particular amount. In cases where they have told us, they've obviously not paid us for those amounts.

ADV KERRY WILLIAMS: But for the claims that they're withholding now, where they approve it and all of that, why do they say you're not entitled to the payment?

MR VISHNU RAMPARTAB: I don't know.

ADV KERRY WILLIAMS: They can only withhold it if you're not entitled.

MR VISHNU RAMPARTAB: Exactly. I don't know, as I said, we –
20 those cases which we claim for, our patients that come to us, we get authorisation, the accounts are submitted, they're validated and they should be paid. It's for services rendered.

ADV TEMBEKA NGCUKAITOBI: Is it so that – to say that from your perspective the only reason these are being withheld is not because they are not due, it's to put pressure on you to settle.

MR VISHNU RAMPARTAB: That is my view. That is my view. In addition, they have not substantiated any loss that they've incurred to us.

ADV TEMBEKA NGCUKAITOBI: Yes, but your earlier point was that if they had they would only be entitled to the extent of that loss.

MR VISHNU RAMPARTAB: Correct.

ADV TEMBEKA NGCUKAITOBI: Alright, thank you, do you have anything else to add? I mean, we – I know we haven't quite allowed you to speak freely but we had asked the things that concerned.

10 **MR VISHNU RAMPARTAB:** *Ja*, I think from our side we've always been committed to resolve this matter and unfortunately I think the manner in which Medscheme have carried this is totally unacceptable and we would like our payments to be made as soon as possible.

ADV TEMBEKA NGCUKAITOBI: Thank you. I want to thank you for coming and presenting and for preparing for this work. We will be in contact with you for further information and we will be sending correspondence. I have no doubt that you will continue cooperating.

MR VISHNU RAMPARTAB: Certainly. Thank you.

20 **ADV TEMBEKA NGCUKAITOBI:** Thank you, the inquiry is adjourned for the day. We will continue tomorrow at 10:00.

INQUIRY ADJOURNS TO 26 SEPTEMBER 2019

TRANSCRIBERS CERTIFICATE FOR
THE COUNCIL FOR MEDICAL SCHEMES (CMS) INQUIRY UNDER
SECTION 59 OF THE MEDICAL SCHEMES ACT
HELD AT
BLOCK A, ECO GLADES 2, OFFICE PARK, CENTURION

DATE HELD : 2019-09-25

DAY: : 10

10 TRANSCRIBERS : N YOUNG; V FAASEN; B DODD; C LEHMANN

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