



## SECTION 59 INVESTIGATION

Day 17

Minutes of the Inquiry

Session 1

Date	Wednesday, 29 January 2020
Time	10:13
Location	420 Witch-Hazel, Block A, Eco Glades
Chairman	Adv. T. Ngcukaitobi

Agenda Subject	Discussion
I. Call to order	<p>Chair Adv. Ngcukaitobi called the inquiry to order at 10:13 AM. He welcomed everyone and announced that Discovery and Discovery Health would be presenting. He then spoke to the representatives from Discovery and informed them that normally he would start with an oath but it would all depend on who would be doing the presentation on behalf of Discovery. This was then followed by chair opening the floor to the representatives from Discovery to introduce themselves.</p> <p>Dr. Jonathan Broomberg, former Chief Executive Officer of Discovery Health greeted everyone and announced that he'd be speaking on behalf of Discovery Health. He then introduced his colleague, Ms. Charlotte Mandisa Sanqela acting PO of Discovery Health Medical Scheme who would also be representing Discovery Health and Discovery Health Medical Scheme and would make a brief presentation right after him.</p> <p>Chair then asked whether the experts who prepared their rebuttal of Dr. Kimmie were external or internal. Dr. Broomberg affirmed that the experts were internal however they had the analysis reviewed by external experts. Chair confirmed that the experts would not be giving their testimony but Dr. Broomberg would be presenting it as a part of his presentation. Dr. Broomberg was then requested to take the oath as he had chosen to. Ms. Sanqela also took the oath.</p> <p>Chair clarified that there was no prescribed manner to do the presentation and that Dr. Broomberg could go on ahead as he dimmed fit.</p>
II. Agenda	<ol style="list-style-type: none"> <li>1. Background context on medical schemes and administrators</li> <li>2. Background to FWA and its impact on medical schemes</li> <li>3. The roles and duties of medical schemes and administrators in relation to FWA</li> <li>4. Background on Discovery Health</li> <li>5. Discovery Health's FWA investigation, recovery and reporting processes</li> <li>6. Responses to allegations of racial profiling/discrimination, unfair conduct and statements of fact made during the Inquiry</li> </ol>

	<p>7. Responses to formal complaints submitted to the Inquiry</p> <p>8. Additional case studies demonstrating the nature and impact of FWA</p>
<p>III. Dr. Broomberg's presentation</p>	<p>Dr. Broomberg thanked the Panel for the opportunity and then expressed how serious they had been about the inquiry and taking a look at their own processes. He pointed out that they avidly believed that the allegations against them were not true. He also mentioned that they were opened to any guidance, advice or recommendations from the panel and would take them into consideration so that they could improve their processes because they were not confident that these were perfect.</p> <p>Dr. Broomberg then pointed out to the panel what the purpose of his presentation was. He outlined that contents of the presentation was to supplement, enhance and assist the Section 59 Inquiry Panel as the content of the presentation is a submission of the operational and legal parameters within which Discovery Health carries out its investigations on fraud, wasteful care and billing abuse ("FWA") on behalf of client schemes to which they are administrators. The contents of the presentation also are detailed responses to complaints lodged by practitioners, observations from representative organizations and/or regulatory bodies, and data requests received from the Panel. Furthermore, the presentation carries their response to Dr Kimmie's report and also is a reflection on the results of their name-based analysis.</p> <p>Dr. Broomberg noted that their concern as Administrators and scheme was to protect the interest of the members. Chair pointed out to Dr. Broomberg that there was not a necessary distinction between the interests of members and that of the service providers. He made reference to the incident of a doctor from East London who came with 10 of her patients who explained the difficulties they had with finding alternative medical help because a medical scheme put her on direct payment. It seemed like although the schemes say their primary responsibility is towards members but it is sometimes hard to draw the distinction.</p> <p>Dr. Broomberg agreed that in many cases it was hard to draw the distinction and one would hope that in most cases the interests of both the member and practitioner are fully aligned. He also said there were instances where the interests are not fully aligned.</p> <p>Adv. Williams interjected by pointing out to something he had said in one of his slides that there might be instances where doctors bend ethical rules all in the name of helping patients. Dr. Broomberg said that this was possible as an environmental factor but however doesn't condone this illegal behavior. He then said this was where they would try to put themselves in the mind of the practitioner.</p> <p>Adv. Williams asked that Dr. Broomberg would give them the capacity or size of Discovery Health.</p> <p>In response to this, Dr. Broomberg gave a brief overview about Discovery Health, he pointed out that it is an accredited medical scheme administrator, which is regulated by the CMS and has about 19 medical scheme clients, and also provides administration and managed care services by the Boards of Trustees of each medical scheme by virtue of a formal contractual agreement. He asked for clarity with regards to what Adv.</p>

Williams meant by size. Chair responded and said that she was referring to size by employees. He then asked what the difference of employee size between Discovery Health and Discovery Health Medical Scheme was.

Dr. Broomberg responded and stated that the size was vast and then pointed out that Discovery Health has 4400 employees and Discovery Health Medical Scheme has about 12 employees.

Adv. Hassim asked regarding the contract that Discovery Health has with all its clients and then asked if the contract would set out the fee structure for Discovery Health. Dr. Broomberg affirmed that it was so and that it also contained set out obligations and agreements that exists between Discovery Health and its Scheme clients and that these contracts are regulated by the Council and are of high confidentiality, however, could be made available to the panel upon agreement that they would be kept confidential.

Dr. Broomberg then pointed out that a very substantial challenge that every medical scheme gets to be faced with is the high and rising medical inflation. So, then one of their primary roles as administrators is to help medical schemes manage the rising medical inflation because when claims costs increase, premiums increase. Chair asked if the 1.5 % medical inflation could be attributable to FWA or fraud to the exclusion of waste and abuse.

In response to this, Dr. Broomberg asserted that it was almost exclusively in their case fraud because the term waste and abuse is a broad one. Therefore in this case it most definitely would be fraud. Chair then had a follow-up question, he asked if this had anything to do with over-utilization that is induced by fraud. He wanted to know where that accounted. In response to this, Dr. Broomberg stated that there were many other activities that they carry out to manage over-utilization that is not counted in the 1.5 % at all which they account for that separately. He then added none of what they would submit to the panel involved their efforts to manage over-utilization seeing that is a subtle subject.

Adv. Williams asked for clarity on the term over-utilization, she asked if it was on the supply side of things where the medical practitioner would be over-servicing. Dr. Broomberg affirmed that indeed it was so. Adv. Williams asked a follow-up question asking if Dr. Broomberg was implying that none of his activities on FWA would reflect on or account for over-servicing. He then responded saying that he wouldn't make such a strong assertion because there may be an element of over-servicing in some of them but would be the marginal component of the kind of activists he'd be talking about.

Dr. Broomberg further explained that over-servicing had nothing to do with a practitioner's clinical decision and is not fraud. In an instance of a patient being hospitalized for an ailment like back-ache but could have been treated home equates to over-servicing.

Chair interjected saying that it was the reason why he asked about this because hospitalization was attributable to or a key driver of costs. He also noted that it was very difficult to know the difference between over-utilization, over-servicing and fraud. For instance, when a patient would go to the doctor for a headache and the doctor would advise that he/she should go to the hospital for 5 days. This might not appear as

fraudulent but is dishonest. Dr. Broomberg responded by admitting that this was rather complicated, however, their default response to a doctor's clinical decision is always to respect it, unless there is very strong evidence that that clinical decision was based on the wrong evidence or that there was no evidence to back it up. He also noted that it is very difficult to second guess a doctor's clinical decision when one is not on ground but far away in an office in Sandton. He then explained that none of the things that would be discussed today were related to a doctor's clinical decision. There would be a very small number where a doctor's recommendation to go to the hospital would be fraud. Like in some instances where a doctor would hospitalize a patient for longer when it was not necessary but so that he or she could make a cash back claim for a hospitalization longer than three days. Now that is fraud. He ascertained the panel that that would be on the margin and not make up a great part of his presentation. The average hospitalization is either warranted but maybe not necessary, and that would not prove to be fraud but over-servicing.

Adv. Williams asked if in they still used Section 59 (3) in relation to activities of dealing with Fraud, Waste and Abuse. Dr. Broomberg affirmed that they still do and had a myriad of examples of this. However, there are examples where they don't have to make use of Section 59(3), like in the instance of certain kind of codes that had been agreed upon not to be billed in a hospital. For example, the drips that are used on a patient in a hospital during a surgery should not be charged because they already are included in the billing per minute. However, for whatever reason some hospitals will have this code included in a claim. In such instances their claims system will acknowledge and process the claim and set it up for payment the next day. However, the people in charge of claims will be notified about it and will be withdrawn before it gets paid out. In such an instance, there would be no need to apply Section 59(3).

Adv. Hassim asked Dr. Broomberg if he was referring to DSP providers when he talked about practitioner contracts. She also asked how they would have contracts with practitioners. Dr. Broomberg responded saying that there were different kinds of contracts with providers. However, it's important to note that the primary contract in the medical scheme environment is between the scheme and its member, and between the patient and the doctor. However, there are certain arrangements between different medical schemes and different practitioners. He then began to distinguish between the DSP contract and a payment arrangement which are both contracts but aren't the same. He then explained that a DSP contract is when they agree with a provider to act as a designated service provider. Which means being a provider of services that are classified as part of treating prescribed minimum benefits. The second category is payment arrangements where regardless of whether a doctor is a DSP or not but have agreed with him or her that their primary contract is the member and would pay the member. However, if he or she is willing to agree to certain conditions he or she would be paid directly. The key condition here is that there is a maximum amount charged for per service, and the agreement is that the practitioner would not balance bill or pay more than the prescribed price. He then said this was a critical function for Discovery Health because 80-90% of practitioners in the DH environment agree to these payment arrangements and serves as protection for members because they know that they would not be charged more, in fact the medical scheme would settle their bill.

Adv. Hassim asked if he said that 80-90% practitioners agree to this. Dr. Broomberg then said that the numbers vary. On average, if they'd include specialists, allied health

	<p>practitioners and GPs he may stand corrected. However, approximately all visits take place in terms of a practitioner in payment agreements.</p> <p>Adv. Williams asked that Dr. Broomberg would show her a copy of this particular contract, she could not locate it. He responded saying that he wasn't sure if they had submitted it but would gladly do so. Chair then asked if he had the racial breakdown of the people who are on the DSP and of those who are on the payment arrangements. Dr. Broomberg said that he didn't have the breakdown but that could be made available. Adv. Williams further asked that based on the assumption that these contracts would have been had over the years, the panel would be furnished with the appropriate ones so to be able to compare if there are any variances.</p> <p>Chair asked if there were definite numbers for these. Dr. Broomberg said that he would have to get back to the Panel with absolute numbers and not make assumptions. Adv. Williams asked that in the case of both contracts, would a doctor be agreeing to a fee cap? Dr. Broomberg affirmed that it was so. She then asked if it would be safe to say that practitioners who are more financially strapped would most likely agree to these contracts. Dr. Broomberg asserted that he was of the belief that it would be so. However, he would believe that it would be less about them being financially strapped but greatly about their patients' economic state.</p> <p>Chair asked if Dr. Broomberg had the racial ratio and percentage rate of people on DSP contracts. He said that he didn't have the information because they do not keep a record of race. Adv. Williams requested that it would be made available to them and submitted.</p>
<p>IV.</p>	<p><b>Discovery Health's contractual mandate and role in FWA</b></p> <p>Dr. Broomberg then proceeded with his presentation and expounded on Discovery Health's contractual mandate and role in Fraud, Waste and Abuse. He noted that this role entailed managing the operational and administrative affairs of client schemes, in which the investigation and recovery of claims paid out incorrectly due to errors or fraud are all inclusive.</p> <p>Dr. Broomberg also touched on the medical schemes and obligations with regards to FWA. He pointed out to how every medscheme has an obligation to control FWA for the benefit of their members.</p> <p>He then highlighted that medical schemes are required to protect the interests of beneficiaries and to preserve scheme funds. Taking appropriate measures to control FWA and to recover funds clearly falls under this mandate. Dr. Broomberg explained that their contractual role is to manage the operational and administrative affairs of client schemes, including the investigation and recovery of claims paid out incorrectly due to errors or fraud.</p>

V.	<p>Dr. Broomberg explained that DH is paid a fixed administration fee per member of each scheme per month, and makes profit to the extent that its income from administration fees exceeds its own operating expenses. DH does not share in the surpluses of its scheme clients.</p>
	<p>Dr. Broomberg said that DH invests substantial resources in analysis, prevention and control of FWA. Resources include a full time team of 44 investigators and auditors supported by 55 actuarial, statistical and clinical professionals who support FWA activities on a part-time basis. Chair asked how many they were in the board of trustees.</p> <p>Chair then asked what the racial breakdown of these investigators was. Dr. Broomberg said that he would have to confirm that and come back to the Panel with accurate information.</p> <p>Furthermore, there are formal governance processes in place for reporting to client medical schemes and oversight by them of all FWA processes.</p>
VI.	<p>Dr Broomberg mentioned that the origination of investigated cases is from tip offs, and half from the scale in their system.</p> <p>Dr Broomberg also mentioned that the administrators make the decisions which are monitored by Discovery Health, and there is a committee of investigators that work on cases</p> <p>Discovery Health has a field force of 40 employees who engage with doctors and their practice managers on a daily basis, including on coding related issues. The scheme's investigation process data using name-based classification methodology, reviewed by Deloitte.</p>
VII.	<p><b>Claims processing</b></p> <p>Regarding the processing of claims, Dr. Broomberg explained that claims are paid in good faith, on the assumption that they are accurate and valid. He also mentioned that it was critical for Discovery Health (and any administrator) to ensure that all claims are paid accurately, according to the rules of each medical scheme, and to ensure that scheme funds are not lost to fraudulent claims or other abuse. He added that this then required ongoing retrospective statistical analysis of claims to identify any claim errors and instances of FWA.</p> <p>Dr. Broomberg stated there are 275,000 claims processed per day, making it R300 million Claims value processed per day, and 94% Claims processed immediately. He then explained that it takes 4 – 5 days to process payments and to ensure receipt. He</p>

	<p>said that Schemes pay claims using automated rules based systems because of the high volume claims.</p> <p>Adv. Hassim then asked a question first stating that in an instance where it is accepted that Regulations 5 and 6 don't apply to fraud, who would then be responsible for determining when an irregularity in a broader sense qualifies as fraud or who would determine when one is in the realm of fraud, and when that determination had been made, what processes does Discovery have in place to deal with that particular claim in a manner that is fair, reasonable and lawful?</p> <p>Dr. Broomberg replied saying that the default assumption on claims at Discovery is that of good faith on the part of the submitter. What they look for in a claim is whether it applies with all the administrative requirements as stated in Section 5. He explained that what would happen would be perhaps a tip-off or red flag alert that might arrive after the claim had been processed and paid. This then would lead to an investigation as outlined and prescribed by the law.</p> <p>Adv. Williams stressed on the question of who exactly determines or decided that a claim is fraudulent?</p> <p>Dr. Broomberg then answered saying that it would be two ways, tip-offs and investigations, the process of investigation is a human effort while everything that gets a tip-off becomes investigated. The team of investigators could notice that the said or alleged irregularity is a billing error and not necessarily fraud. So, then they could send someone to the field to notify them of the error to correct it. Conversely, the tip-off could be on to something and fraud would be prevalent. That would be when the necessary measures would be taken. He then said that this meant human investigators who are under the supervision and authority of set regulations are responsible for determining whether an irregularity is fraud or not. Chair then asked if these people would be the 55 and 4; investigators. Dr. Broomberg said that it was the 44. Chair then asked a follow-up question, asking what the qualifications of these 44 people are. Dr. Broomberg explained that they are forensic investigators but requested for a little time to confirm with his colleagues that were seated behind him.</p> <p>Chair asked how many doctors were on the forensics team. Dr. Broomberg said that they had two doctors along with other professionals who are in the medical field.</p> <p>Chair announced that the inquiry would adjourn for a few minutes for a break then would resume at 14:45</p>
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Adjournment: Adjourned at 14:15 to resume at 14:45

**Section 59 Investigation  
Inquiry Meeting Minutes  
Session 2**

Date	Wednesday, 29 January 2020
Time	15:00
Location	420 Witch-Hazel, Block A, Eco Glades
Chairman	Adv. T. Ngcukaitobi

Agenda subject	<p>Chair opened the floor and gave Dr. Broomberg the go ahead in continuing with his presentation</p> <p>Dr. Broomberg said that the identification methods for potential FWA cases were primarily Tip-offs and Statistical analysis</p> <p>He then explained that Tip-offs came from members, other health practitioners and other stakeholders and Statistical algorithms and risk rating tools were also applied to identify potential FWA. He further noted that various whistle-blowing channels are provided and that most tip-offs occur through an e-mail link provided in electronic claims statements sent to members. The algorithmic approach seeks to identify statistical 'outliers' and claims trend irregularities.</p> <p>Dr. Broomberg went on to explain that in the event of statistical analysis, statistical analysis uses proprietary risk rating tools to identify practices at high risk for potential FWA. He also added that the inputs to the statistical analysis include 30 independent risk metrics, which are not linked to practitioner demographic factors.</p> <p>Chair then asked who would determine if a certain professional field would be a risk and deserving of an investigation. Dr. Broomberg requested that Mr. Smith who is the head of forensics would be called forth to answer the questions. Chair granted the request and asked Mr. Smith to take the oath before he could give his testimony.</p> <p>Mr. Smith explained that the aim was not to target a specific discipline but to cover all disciplines. The number of flags around the discipline would determine the focus on the discipline.</p> <p><u>Overview of responses to complaints to date</u></p> <p>Dr. Broomberg noted that Discovery Health had submitted 34 affidavits to the Panel regarding complaints made during the Inquiry. He explained that in all cases, there had been a rational basis for investigation and in all instances they followed a fair process to ensure that procedural rights were protected at all times.</p> <p>He said that cases are reported to the authorities where appropriate and in terms of applicable legislation. Examples of their case-specific approaches are found in their 34 responses to complaints.</p> <p>Adv. Williams thanked Dr. Broomberg for the information they submitted in the affidavits. She then asked a question making reference to the case of Ms. B, she wanted to know about the interaction between Discovery and the said practitioner. Dr. Broomberg said that the scheme would have not been involved in the decision to suspend payment in case of Ms. B. Adv. Williams pointed out that Ms. B was later blocked, so what then could have</p>
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	<p>been the explanation. Dr. Broomberg said that he didn't have detailed information on the events of her case. However, he could have the minutes to the meeting with Ms. B.</p> <p>Adv. Williams pointed out that she wasn't convinced that all the practitioners that he affirmed were fraudulent. She pointed him to the case of one Dr. Molepo. Dr. Broomberg withdrew his statement. Chair then stated that this indicated that there are instances where there could be fraud and in some instances where there would not be any.</p> <p>Dr. Broomberg reflected on Dr. Kimmie's findings which stated that there was clear and strong evidence of racial bias with respect to the outcome of FWA processes as implemented by DH. Furthermore, these findings showed that bias was not restricted to only a limited time period, nor was it located within only particular disciplines. The bias may vary in scale across these factors, but was widespread and consistent. Dr. Kimmie had carefully examined the assumptions that underpin these findings and convinced that the results were robust.</p>
I.	<p>Dr. Broomberg stated that they had taken the accusations of racial profiling very seriously and therefore initiated a series of measures to address these practitioners concerns:</p> <p>experts, Dr. Broomberg said that DH recognizes that it is important to assess whether there is any disproportionate racial differentiation in their forensic outcomes. Their analysis provided strong evidence that there was no unfair discrimination in their forensic processes.</p> <p>Chair asked if there were any factual information that backed up DH's claims and challenged Dr. Kimmie's findings. Dr. Broomberg explained that DH's surname analysis on FWA investigations in Context meant that they had undertaken a detailed analysis of its FWA investigation data to address the allegations of racial profiling, and to assess if there is any evidence of explicit or implicit racial bias in forensic processes. He also pointed out that the analysis had been subjected to independent review by Deloitte. He then explained the methodology that was applied in their investigations, and he pointed that Discovery Health used a name-based method for data analysis since no race data is available.</p> <p>Chair asked if Dr. Broomberg was certain about the existence of confounding factors or was raising assumptions. Dr. Broomberg said that he was sure that there was a prevalence of confounding factors but could not specify what they were.</p> <p>He then pointed out the following about Dr. Kimmie's findings to support his conclusion about confounding factors. He said that Dr. Kimmie did not investigate the impact of confounding factors due to lack of data. He then also said that Dr. Kimmie's results show significant variation by discipline which clearly confirms the existence of at least one confounding factor. Dr. Broomberg said that this analysis confirmed that the identified confounding factors reduce the differences in FWA outcomes by race by more than 75% - from a risk ratio of 1.36 to a risk ratio of 1.09. Furthermore, he stated that there could well be additional confounding and environmental factors that could explain the remaining difference.</p> <p>Furthermore, he stated that there was no evidence before the Panel of either implicit or explicit bias in any of DH's FWA processes.</p>

II.	<p><b><u>Closing Remarks</u></b></p> <p>Dr. Broomberg thanked the panel for the opportunity to respond and make their submissions.</p> <p>Chair thanked everyone who came and he pointed out that Ms. Sangela was timely in her responses to the Secretariat and commended her for that. He asked if she had anything to add since she had been on the line up for remaking a presentation. She said that Dr. Broomberg had covered everything.</p>
III. Other business	<b><u>None</u></b>

Adjournment: inquiry was adjourned at 16:35. Next meeting would hold on Thursday, 30 January 2020 at 10:00