



JOINT PRESS CONFERENCE HELD BY THE DEPARTMENT OF HEALTH AND THE SPECIAL INVESTIGATING UNIT (SIU) ON THE SIU INVESTIGATION INTO MEDICO-LEGAL CLAIMS

24 AUGUST 2024

We called this media briefing to provide a progress report on the ongoing investigations by the Special Investigating Unit (SIU) into medico-legal claims made against the Department of Health across the country.

Background

Around 2015 the Health Sector experienced an explosion of medical practice litigation cases directed against health institutions as well as individual medical practitioners in both the public and private practice.

This explosion happens to have coincided with the Road Accident Fund (RAF) strengthening its systems. It is common cause that RAF had been hollowed out by a multiplicity of claims that brought it down to its knees.

In the aftermath legal practitioners who used to litigate against RAF seem to have migrated en masse to the Healthcare Sector.

In response, the Department of Health convened a medico-legal claim Summit in 2015. The following is the summary of the background of the Summit:

- It was attended by various stakeholders including representatives from both the public and private healthcare sectors, the legal profession itself and other health experts.

Over and above the RAF migration phenomenon mentioned above, delegates deliberated on contributing factors and/or other reasons for the escalation of medico-legal claims, and identified possible solutions.

The possible solutions were classified in three (3) broad areas:

(i) Patient safety:

It was recognised that adverse events do happen in health facilities and practices the world over, on the one hand. On the other hand incidences of negligence, malpractice or unethical behaviour by health practitioners do also occur. The Summit then focused on the plans to reduce these incidences.

(ii) Administrative solutions:

This entails proper keeping of good medical records, minimising theft of medical records and proper communication with patients and members of the public.

(iii) Legal solutions:

This entails looking at various legal interventions even before matters went to court. This includes but not limited to mediations, possible review of contingency fees and staggered payment to claimants.

However, the Department of Health noticed several claims which were completely out of synch and made no sense at all. There were claims that were evidently fraudulent.

Just as an example, a claim was submitted in which the claimant demanded R70 million for a supposedly botched circumcision by a doctor in a hospital in Limpopo Province. On investigation of this claim, it was found out that no such circumcision was ever performed. It was found that the patient was actually treated for a very serious genital infection. The hospital actually saved his life.

The SIU was then called in to look into these very suspicious claims.

In 2017, the SIU started their work by targeting provinces with the highest share of claims.

These were in Gauteng and the Eastern Cape Provinces.

By that time, the Eastern Cape contingent liability in respect of medico-legal claims amounted to R15,9 billion while in Gauteng the figure was R21,2 billion.

This means that should all the cases be won in court by the litigants, then the Department of Health would had to pay this staggering amounts.

General findings of the SIU:

- Most of the claims were targeting cerebral palsy, a condition in which babies develop some form of brain damage due to depravation of oxygen during the process of birth.
- While it is recognised that cerebral palsy is a very debilitating and unfortunate occurrence to come from the healthcare system, it is a matter of very serious concern that it is abused by legal practitioners, due to sheer greed. The level of abuse was such that the SIU found that some of the claims were made on behalf of patients without their knowledge.
- Elderly people who are taking care of their grandchildren in the absence of their mothers, were tricked into signing the Power of Attorney to sue, whereas they were told that they were signing SASSA forms for child support grants. This simply means that legal practitioners or their scouts were masquerading as social workers.

Specific findings in the Eastern Cape

- In the Eastern Cape, most of the medico-legal claims emanated from one Johannesburg-based law firm. We are able to name the firm today because they have already been charged in a court of law. This is Nonxuba Attorneys Incorporated. In a period of 15 years, i.e from 2012 to 2017 this law firm submitted 44 medico-legal claims to the tune of R497 million against the Eastern Cape Department of Health. Most of their claims as mentioned above were for children supposedly born with cerebral palsy.

Cerebral palsy is not necessarily a homogenous condition. This means that the effects of the brain damage are not the same for all individuals because different parts of their bodies may be affected. However, the claims submitted by Nonxuba for each of nine children for whom claims were submitted were identical in that he demanded R15 million

each. This was clearly suspicious and also indicated a lot of cut-and-paste on the part of this legal firm.

- Between 2010 and 2016, medico-legal claims increased from 46 to 529 in the Mthatha High Court alone.
- There is evidence of collusion between attorneys, touts, nurses and doctors in both the public and private healthcare.

In some instances nurses stole the medical records and illegally handed them over to attorneys.

The attorneys would then apply through PAIA (Promotion for Access to Information Act) for the same records they are illegally in possession of. Naturally such records will not be found and the lawyer then claims fees from the Department for failing to provide records.

- Unfortunately there was also collusion involving some officials in the Office of the State Attorney, whereby out-of-court settlements for hefty sums were entered into without the mandate or even the knowledge of the department.
- Litigating attorneys would even sue for one case in two different courts. A variation of that is a situation where two different lawyers would claim for the same patient using identical details. Notably, whereas the patient is one person, the two attorneys will claim for vastly different amounts. One attorney would claim R7,5 million and the other R25 million for the same patient and same condition. This clearly indicates the arbitrariness of the claims.

After these findings in the Eastern Cape, the National Health Council (NHC) then decided that the SIU investigates all provinces. Hence the SIU obtained proclamation R74 of 2022 from the President of the Republic.

On the 29th July 2024, the SIU briefed the Department about progress in this regard.

PROVINCIAL BREAKDOWN OF MEDICO-LEGAL CLAIMS

Eastern Cape Department of Health (“ECDoH”)

No	Activities	Number/ amount
1	Number and Value of claims submitted to the department by the attorneys.	2,500 medico-legal claims valued at R22.3 billion

2	Number and Value of cases currently under investigation	197 medico-legal claims valued at R3.8 billion
3	Total amount paid by the department towards Medico-Legal claims (as per the NDOH information for 2015/16 to 2020/21)	R3 039 951 634.08
4	Number and value of cases finalized (investigation)	89 matters to the value of R1.2 billion
5	Number and value of cases unfinalized (investigation)	108 matters to the value of R2.6 billion
6	Summary of irregularities identified	<ul style="list-style-type: none"> • The SIU has finalized its investigations regarding 23 Letters of Demand (“LODs”) whereby lawyers were demanding R298 million. 15 of these 23 letters to the value of R271.8 million were fraudulent because the claimants told the SIU during the investigations that they had never visited any of the health facilities that were being litigated against, and indeed no records of these patients were found in those facilities. Notably, all these letters were submitted by a single law firm, but we are unable to mention the name because they have not yet been charged in a court of law. • These fraudulent claims were successfully removed from the contingent liability register of the ECDoH saving them money. • There are 35 additional matters valued at about R600m, currently under investigation, initiated by Nonxuba Attorneys Inc. in which no Trusts were registered as per the court orders. • The SIU has made 45 referrals of attorneys to the NPA, amounting to R279.5 million, for consideration of criminal charges related to fraud, theft, embezzlement of trust funds, and contempt of court against certain legal firms, including Nonxuba. Again we are unable to name the other legal firms because they have not as yet been charged. • The same attorneys were also referred to Legal Practice Council (LPC) for violation of the Code of Conduct for Legal Practitioners, and the Legal Practitioners Fidelity Fund (LPFF) to consider reimbursing claimants whose funds were embezzled by their legal representatives. • The SIU has identified numerous cases in the Eastern Cape where the living conditions of the claimants and their children remain appalling, despite receiving compensation from the Department, which money has been paid to their lawyers. Many of these claimants are unemployed and rely on social grants from SASSA for their livelihood despite millions having been deposited into their lawyers’ accounts. Some households are

		<p>constrained to a single-room "rondavel" without appropriate railing or ramps to assist disabled children, resulting in inadequate living conditions and insufficient caregiving, despite the fact that in the claims, money has been paid for these types of facilities.</p> <p>Furthermore, the SIU found that these children continue to place a burden on the already strained public healthcare system, whereas in the claims in court the lawyer cited future healthcare based on fees charged in private hospitals.</p> <ul style="list-style-type: none"> • One notable instance involves cases where the Department paid R373,850,748.04 to Nonxuba Inc. for 22 claims between 2018 and 2021. However, several years later, an inspection by the SIU revealed that none of the claimants had Trust Accounts registered in their names as ordered by the courts, and their living conditions were found to be deplorable and impoverished. This means that Nonxuba Attorneys have pocketed all the money for themselves. This matter is already before court.
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Free State Department of Health ("FSDoH")

No	Activities	Number/ amount
1	Number and Value of claims submitted by attorneys to the department	417 medico-legal claims valued at R4.9 billion
2	Number and Value of cases currently under investigation	52 medico-legal claims valued at R400 million
3	Total amount paid by the department towards Medico-Legal claims (as per the NDOH information for 2015/16 to 2020/21)	R95 607 862.16
4	Number and value of cases finalized (investigation)	30 matters finalised to the value of R280 million
5	Number and value of cases still under investigation	22 matters still under investigation to the value of R120 million
6	Summary of irregularities/wrongdoings identified	<ul style="list-style-type: none"> • The SIU has identified a matter where the claim was valued at R7.5 million in which the lawyers went against the medical advice of their own medical experts who advised them that there were no negligence on the part of the department. When the SIU confronted the lawyer, she then immediately withdrew the case. • Again, in the Free State, Nonxuba attorneys were found to be practicing without a fidelity fund certificate as required by law. This matter has been referred to the NPA.

		<ul style="list-style-type: none"> • The SIU has made 17 referrals to LPC against three law firms, including Nonxuba for misconduct related to touting for work, which is forbidden by the law. The value of these referrals is approximately R78 million. • The theft of medical records has been discovered in the Free State, along with attorneys withholding funds intended for claimants. It was found that in most instances, the hospitals did not have the medical records. This problem involved two specific hospitals in the province. In one case where a settlement for general damages was made, the court did not require the establishment of a trust. Instead, R6 million was paid into the claimant's attorney's account. The attorney firm paid the claimant R250 000 initially and then R10 000 monthly. This irregularity is under further investigation. As can be seen, this law firm is making undue benefit from the interest of the money that belongs to the patient.
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Gauteng Department of Health ("GDoH")

No	Activities	Number/ amount
1	Number and Value of claims submitted to the department	2 450 medico-legal claims valued at R24 445 550 786.00
2	Number and Value of cases currently under investigation	611 medico-legal claims valued at R4 175 863 219.00
3	Total amount paid by the department towards Medico-Legal claims (as per the NDOH information for 2015/16 to 2020/21)	R1 001 530 165.26
4	Number and value of cases finalized (investigation)	58 medical-legal claims valued at R66 015 234.00
5	Number and value of cases unfinalized (investigation)	2 392 medical negligence claims valued at R23 783 535 552.00
6	Summary of irregularities identified	<ul style="list-style-type: none"> • The SIU identified 40 matters involving claims submitted to the value of R496,650,009.00. <ul style="list-style-type: none"> - 19 out of these 40 claims are on behalf of children who are actually deceased, but the lawyers continued with the claims.

		<ul style="list-style-type: none"> - Two of the 40 are actually employed whereas the lawyer has claimed for loss of earnings. - one child actually had no Cerebral palsy whereas the claim was for this condition. - nine claimants' attorneys withdrew when they realized that the SIU was investigating. The value of their claims was R149,304,625.00. - one case was struck off the roll. - one patient denied having instituted a civil claim. • In all these instances of wrongdoing SIU will refer implicated attorneys and officials to NPA, LPC and the LPPF
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KwaZulu Natal Department of Health ("KZNDoh")

No	Activities	Number/amount
1	Number and value of claims submitted to the department	2 440 medico-legal claims valued at R29 140 032 315.42
2	Number and value of cases currently under investigation	713 medico-legal claims valued at R8 703 474 902.82
3	Total amount paid by the department towards Medico-Legal claims (as per the NDOH information for 2015/16 to 2020/21)	R1 369 280 875.49
4	Number and value of cases finalized (investigation)	107 matters valued at R2 416 284 800.00
5	Number and value of cases unfinalized (investigation)	1420 matters valued at R18 020 272 612.60.
6	Summary of irregularities identified	<ul style="list-style-type: none"> • Out of the 107 matters finalized, 76 relate to instances where claimants are actually deceased and the value is R1, 715,500,250.00. This money has been removed from the contingent liability. • One attorney was found to have submitted a claim to the value of R16 million after the death of the child. Significantly in court, the lawyer was claiming for future medical care based on private hospital rates and loss of amenities of life. This one will be referred for criminal prosecution. • The SIU has made 4 referrals to the NPA and 3 LPC against the attorneys and private individuals who were found in possession of stolen medical records. • All in all a loss of R2 416 284 800.00 has been prevented

Mpumalanga Department of Health (“MDoH”)

No	Activities	Number/amount
1	Number and value of claims submitted to the department (as per the NDOH information for 2015/16 to 2020/21)	519 medico-legal claims to the value of R6 465 860 191.34
2	Number and value of cases currently under investigation	902 medico-legal claims valued at R10 115 964 997.77
3	Total amount paid by the department towards Medico-Legal claims (as per the NDOH information for 2015/16 to 2020/21)	R139 230 115.26
4	Number and value of cases finalized (investigation)	0
5	Number and value of cases unfinalized (investigation) (information from forensic report)	902 medico-legal claims valued at R10 115 964 997.77
6	Summary of irregularities identified	<ul style="list-style-type: none"> Irregularities are still being investigated.

Limpopo Department of Health (“LDoH”)

No	Activities	Number/amount
1	Number and value of claims submitted to the department	1600 medico-legal claims valued at R14 billion
2	Number and value of cases currently under investigation	303 medico-legal claims valued at R5,267,289,943
3	Total amount paid by the department towards Medico-Legal claims	R248 390 884. 66
4	Number and value of cases finalized (investigation)	63 medico-legal claims valued at R139 753 944.09
5	Number and value of cases unfinalized (investigation)	698 medico-legal claims valued at R2, 732, 710, 053
6	Summary of irregularities/wrongdoings identified	<ul style="list-style-type: none"> The SIU identified 26 matters to the value of R657 291 825.00, in which the claimants were confirmed to be deceased, but the lawyers continued with the claims in which they are citing future medical care, loss of income, and loss of amenities of life. These cases will be referred to the NPA for criminal prosecution, and LPC for professional misconduct. In another matter, the Department paid R120 000.00 for the claims into the accounts of the attorney’s trust, amazingly the attorney kept the money since 2016 and suddenly released it to the claimant, even

		<p>doubling the amount to R240 000.00 after the SIU was authorised to investigate medico-legal claims.</p> <ul style="list-style-type: none"> The amount of R657 291 825.00 cited above will be removed from the Province's contingent liability.
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Northern Cape Department of Health ("NCDoH")

No	Activities	Number/amount
1	Number and value of claims submitted to the department	114 medico-legal claims valued at R1 564 225 626, 46
2	Number and value of cases currently under investigation	20 medico-legal cases valued at R558 555 250
3	Total amount paid by the department towards Medico-Legal claims (<u>as per the NDOH information for 2015/16 to 2020/21</u>)	R1 464 272 205.42
4	Number and value of cases finalized (investigation)	1 medico-legal claim finalized valued at R23 250 000
5	Number and value of cases unfinalized (investigation)	19 medico-legal claims valued at R535 305 250
6	Summary of irregularities identified	<ul style="list-style-type: none"> The SIU investigation uncovered a case where R31 million was deposited into the Attorney's Trust account to pay the claimant directly. However, the lawyer did not open the trust account as directed by the court order, which resulted in them keeping the money and earning bank interest. This matter will be referred to the LPC for professional misconduct, and to the NPA for criminal prosecution. In one instance, the lawyer was paid R18,700,000, but decided to pay to the patient only R6,000,00 per month for the past 18 months. There is no indication that the lawyer was going to pay any other amount if the SIU did not intervene. This case will be referred to the LPFF to reimburse the poor patient, and the lawyer will be referred to the LPC. The SIU further identified four (4) matters to the value of R169,400,000.00, all submitted by one attorney. The patients were interviewed and denied that they ever signed a power of attorney or instructed any attorney to lodge claims against the department on their behalf. <p>These matters will be referred to the LPC for professional misconduct, and to the NPA for criminal prosecution.</p>

North West Department of Health (“NWDoH”)

No	Activities	Number/amount
1	Number and value of claims submitted to the department	230 medico-legal claims to the value of R1,589,262,939
2	Number and value of cases currently under investigation	32 medico-legal claims valued at R222 million
3	Total amount paid by the department towards Medico-Legal claims (as per the NDOH information for 2015/16 to 2020/21)	R122 492 200.36
4	Number and value of cases finalized (investigation)	12 medico-legal claims to the value of R32 million
5	Number and value of cases unfinalized (investigation)	20 medico-legal claims to the value of R190 million
6	Summary of irregularities identified	<ul style="list-style-type: none"> The SIU found three cases where R45 million was not deposited into Trust Accounts for patients as required by court orders. Instead, the money was placed into attorneys' trust accounts since December 2018, accruing interest, rather than establishing a Trust Account for the claimants. This matter will be referred to the LPC for professional misconduct, and to the NPA for criminal prosecution. The SIU discovered a case in which a claimant's attorney received R14,450,000.00 and only paid the patient R370,000.00. The money was deposited into the attorney's account in February 2021, but the attorney only paid the patient in May 2022, after a year. The investigation revealed that the attorneys acted fraudulently and in contempt of court. <p>These matters will be referred to the LPC for professional misconduct, and to the NPA for criminal prosecution.</p>

Western Cape Department of Health (“WCDoH”)

No	Activities	Number/amount
1	Number and value of claims submitted to the department (as per the NDOH information for 2015/16 to 2020/21)	409 medico-legal claims to the value of R2,852,588,055.99

2	Number and value of cases currently under investigation	Preliminary assessment of raw data/databases of claims provided by the Office of the State Attorney
3	Total amount paid by the department towards Medico-Legal claims (as per the NDOH information for 2015/16 to 2020/21)	R273,248,535.91
4	Number and value of cases finalized (investigation)	Preliminary assessment of raw data/databases of claims provided by the Office of the State Attorney
5	Number and value of cases still under investigation	Preliminary assessment of raw data/databases of claims provided by the Office of the State Attorney
6	Summary of irregularities identified	<ul style="list-style-type: none"> In the Western Cape, the SIU identified 33 fraudulent birth injury claims in the contingency liability register to the value of approximately R409 million. These cases include allegations of fraudulent medical negligence claims submitted by Nonxuba Incorporated Attorneys on behalf of various patients. Fortunately, nothing has been paid and the Department and the matters are before the court.

So far, in the matters completed by the SIU, the sum of R3,104,684,800.00 has been saved for various Departments of Health. We believe that this amount will increase as the investigations are still ongoing.

CONCLUSION

The relationship between the department and the SIU in the fight against corruption is not only limited to the medico-legal investigation but extends to areas of the department where corruption rears its ugly head.

This will also include among others the implementation of the National Health Insurance (NHI), which many people believe is being planned on a foundation of corruption. We are already working together through the health sector anti-corruption forum.

There are naysayers that investigations by institutions like the SIU are just public relations exercises and are meant not to yield any results. This was said by a prominent South African in May this year after the Department of Home Affairs called the SIU to raid the Refugee Reception Centres after a tip-off by a whistleblower. We can assure you today, that the results of those raids on Refugee Reception Centres will be announced in due course by the SIU, as we are now announcing the results of the medico-legal claims investigation.

We wish to take this opportunity to make an offer to lawyers who might have knowingly submitted claims that are fraudulent, to withdraw them within two weeks and there will be no consequences. Failure to withdraw within two weeks would mean that the offer will have lapsed and the SIU will strike.

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