



CIRCULAR

Reference: Election of Trustees
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Circular 29 of 2015: Draft Undesirable Business Practice Declaration in terms of Section 61(2) of the Medical Schemes Act, 1998 (Act No. 131 of 1998)

Electoral Practices and Processes involved in Election of Members of Board of Trustees for Medical Schemes

1. INTRODUCTION

- 1.1. The acting Registrar of Medical Schemes (“the Registrar”) is – in terms of section 61(2) of the Medical Schemes Act – actively considering the possibility of declaring certain practices, in relation to election of trustees in medical schemes, undesirable. On **17 April 2015**, the Registrar published in Government Gazette No. **38693**, a draft undesirable business practice declaration.
- 1.2. The draft declaration addresses practices that result in undesirable involvement and influence by interested parties and service providers in election of trustees of medical schemes. The draft declaration is also an invitation to all interested persons to make representations regarding the proposed declaration.
- 1.3. The practices referred to in the draft declaration have or are likely to have the effect of rendering elections of trustees unfair, and of unfairly prejudicing members’ right to elect trustees. If the practices are allowed to continue, the objects and purpose of provisions of section 57 of the Medical Schemes Act will or are likely to be defeated.

1.4. The representations invited in the draft declaration are to reach the acting Registrar within 21 days after, **17 April 2015**, the day of publication of the notice of the draft declaration. Accordingly, the last date for submission of written representations is **08 May 2015**. Particulars for submission are contained in this circular and in the draft declaration.

1.5. A copy of the draft declaration can be obtained from the following link:
http://www.gpwonline.co.za/Gazettes/Gazettes/38693_17-4_NationalGazette.pdf

1.6. This circular serves to provide details of considerations that the Registrar took into account in determining whether or not the declaration should be made. It is prepared in order to enable interested persons to provide written representations – that are envisaged by provisions of section 61(2) of the Medical Schemes Act- before the declaration is published in terms of section 61(1) of the Medical Schemes Act.

Written representations should be directed to one of the following addresses by 08 May 2015:

Mail: Compliance and Investigations Unit, Council for Medical Schemes, P/Bag x34, Hatfield, 0028.

Email: declarationcomments@medicalschemes.com

Fax: 012 431 0656

Post: Council for Medical Schemes, P/Bag x34, Hatfield, 0028

Block A, Eco Glades 2 Office Park

420 Witch-Hazel Avenue

Eco Park

Centurion, 0157

Tel: 086 112 3267

2. CONSIDERATIONS THAT THE REGISTRAR TOOK INTO ACCOUNT

2.1. The Compliance and Investigations Unit of the Council for Medical Schemes (“CMS”) has performed inspections for the Registrar on affairs – relating to election of members of the boards of trustees – of various medical schemes. During these inspections, certain practices were discovered.

- 2.2. As a result of the inspections, it is apparent that there are different types of practices from one case to the other. However, they all have the same outcome of prejudice and unfairness as well as serve to defeat the object and purpose of provisions of the Medical Schemes Act.
- 2.3. The practices addressed in the draft declaration include any voting and electoral activity marked by any or all of the following characteristics:
- 2.3.1. A member of a medical scheme, who simultaneously holds a position of an officer of the same medical scheme and participates as a member in the electoral process on one hand, while on the other hand serves and participates as an officer in regard to the election processes.
- 2.3.2. A person that is a service provider to a medical scheme (including holding company, subsidiary, joint venture or associate of such service provider), and or officers or agents of such service provider,
- (a) influence or campaign for an employee(s) of the service provider to serve as a proxy or proxies to be appointed to vote to elect trustee(s) at a general meeting of members;
 - (b) influence or campaign for a proxy or proxies of their choice to be appointed to vote in general meetings in order to elect trustee(s) or take decisions that affect rights of members and interests of medical schemes at a general meeting of members; or
 - (c) Influence or campaign for candidate(s) of their choice to be elected as trustee(s) at a general meeting of members.
- 2.3.3. A person who – by virtue of services provided to a medical scheme and its beneficiaries – has access to or has possession of information and details of members of a medical scheme uses such information and details and/ or alternatively provide such details and information to another person, for purposes of campaigning or influencing the outcome of election of members of a board of trustees.
- 2.4. The general rule in relation to voting at general meetings is that attending and voting at AGMs has to be in person, voting is by way of a majority of those present at a meeting. Absent persons have no right to vote;

an exception to this general rule is to permit a person to delegate to another a right to attend, speak and vote at a meeting on behalf of the delegating person.

- 2.5. The Registrar recognizes the right of each and every member of a medical scheme, notwithstanding a business or professional relation that exists between a member and a medical scheme, to vote and participate in voting and decision making processes in a medical scheme.
- 2.6. Provisions of the Medical Schemes Act seek to prevent influence of a service provider from dominating a board of trustees of a medical scheme. This object and purpose to prevent influence of a service provider from dominating a board of trustees of a medical scheme, may be circumvented where a service provider sponsor and campaign for its candidate.
- 2.7. The formal act of casting a vote is preceded by electoral competition for votes. To the extent that a service provider brings its resources and organisational machinery to bear in an electoral competition in favour of its candidate by, among other activities influencing the proxy or members, such participation of a service provider brings inequality to the electoral competition.
- 2.8. Voting and or election process that derogates the rights of members of a medical scheme is unfair and defeats the purposes of the provisions of the Medical Schemes Act.
- 2.9. In regard to access and possession of information and details of members of a medical scheme; such information is obtained for the purposes of carrying on the business of a medical scheme. Use of such information and details and/ or alternatively providing such details and information to another person, for any other purposes is invasive of the right to privacy as articulated in section 5 of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).
- 2.10. Secondly, use of such information and details allows a person in possession of such information to incorporate the intensity of the preference of such person about their preference of trustees. Such an information holder thus disproportionately dominates a sphere in which votes are allocated equally among members of a medical scheme. This culminates in inequality of members in the electoral arena.

3. CONCLUSION

The Registrar of Medical Schemes believes that the draft declaration of undesirable business practice is important for fair voting and election of members of medical schemes. This circular does not relate to campaigns and election processes of medical schemes that are required of medical schemes, but relates to activities and conduct of members of a medical scheme who also have a work or business relationship or interest in a medical scheme.



STEPHEN MMATLI
GENERAL MANAGER: COMPLIANCE & INVESTIGATIONS
COUNCIL FOR MEDICAL SCHEMES

NOTICE 333 OF 2015**COUNCIL FOR MEDICAL SCHEMES****MEDICAL SCHEMES ACT, 1998 (ACT NO. 131 OF 1998)**

NOTICE OF INTENTION TO PUBLISH DECLARATION OF CERTAIN ELECTORAL AND VOTING PRACTICES UNDESIRABLE BUSINESS PRACTICE IN TERMS OF SECTION 61(2) OF THE MEDICAL SCHEMES ACT, 1998 (ACT NO.131 OF 1998).

1. In terms of section 61(2) of the Medical Schemes Act, 131 of 1998, the Registrar of Medical Schemes hereby:
 - a. publishes his intention to make the following undesirable business practice declaration; and
 - b. Invites written representations in respect of the proposed declaration.

2. The written representations addressed to: The Registrar of Medical Schemes (Attention: Sibonelo Cele), Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, or email: s.cele@medicalschemes.com are to reach the Registrar of Medical Schemes within 21 days after the date of publication of this notice.

DRAFT DECLARATION

In terms of section 61(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), the Registrar of Medical Schemes, with the concurrence of the Council for Medical Schemes and the Minister of Health, makes declaration contained in the Schedule to this notice, which shall be applicable to all medical schemes and its members.

SCHEDULE

It shall be undesirable business practice for-

1. A member of a medical scheme who also is an officer of the same medical scheme to participate as a member in the electoral process on one hand, on the other hand serves as an officer in regard to the election processes.

2. For a person that is a service provider to a medical scheme (including holding company, subsidiary, joint venture or associate of such service provider), and or officers or agents of such service provider to:

- 2.1. influence or campaign for an employee(s) of the service provider to serve as a proxy or proxies to be appointed to vote to elect trustee(s) at a general meeting of members;
 - 2.2. influence or campaign for a proxy or proxies of their choice to be appointed to vote in general meetings in order to elect trustee(s) or take decisions that affect rights of members and interests of medical schemes at a general meeting of members; or
 - 2.3. influence or campaign for candidate(s) of their choice to be elected as trustee(s) at a general meeting of members.
3. For any person who -by virtue of services provided to a medical scheme and its beneficiaries- has access to or possession of information and details of members of a medical scheme to use such information and details, and/ or alternatively provide such details and information to another person, for purposes of campaigning or influencing the outcome of election of members of a board of trustees.

Note: The above practices do not apply to ordinary campaigns and election processes of a medical scheme that are required of medical schemes –through their officers or delegates- in accordance with the rules of a medical scheme.



DANIEL LEHUTJO
THE ACTING REGISTRAR OF MEDICAL SCHEMES