

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

71

CASE NO : 12511/14

In the matter between:

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

**MEDSHIELD MEDICAL SCHEME
T.B. LANGA N.O.**

Respondent

INDEX		
NO	DOCUMENT	PAGE
1	NOTICE OF MOTION	1-3
2	FOUNDING AFFIDAVIT : MONWABISI SABATHA MACDONALD GANTSHO	4-37
3	ANNEXURE "FA1.1" : PHALENG'S CONSENT TO BEING APPOINTED AS PROVISION CURATOR	38
4	ANNEXURE "FA1.2" : CURRICULUM VITAE : TEBOGO PHALENG	39-43
5	ANNEXURE "FA2" : COURT ORDER : CASE NUMBER 56193/12 SECOND RESPONDENT APPOINTED AS PROVISIONAL CURATOR	44-51
6	ANNEXURE "FA3.1" :	52

	COURT ORDER : CASE NUMBER 56193/12 PROVISIONAL CURATORSHIP ORDER CONFIRMED AND FINAL ORDER MADE IN TERMS OF PARAGRAPH 8 OF THE NOTICE OF MOTION	
7	ANNEXURE "FA3.2" : NOTICE OF MOTION	53-61
8	ANNEXURE "FA4" : JUDGMENT WHEREOF LEAVE TO APPEAL GRANTED	62-64
9	ANNEXURE "FA5" : MONTHLY REPORT FOR NOVEMBER 2013	65-69
10	ANNEXURE "FA6.1 AND "FA6.2" : MMATLI AND LUBBE'S CONFIRMATORY AFFIDAVITS RESPECTIVELY	70-73
11	ANNEXURE "FA7" : CORRESPONDENCE DATED 8 NOVEMBER 2013 : DISCUSSIONS OF THE 6 TH OF NOVEMBER 2013	74-77
12	ANNEXURE "FA8" : PROVISIONAL CURATOR'S REPORT TO THE REGISTRAR OF MEDICAL SCHEMES IN RELATION TO THE AFFAIRS OF MEDSHIELD MEDICAL SCHEME DATED 25 NOVEMBER 2013	78-84
13	ANNEXURE "FA9" : PROVISIONAL CURATOR'S REPORT TO THE REGISTRAR OF MEDICAL SCHEMES IN RELATION TO THE AFFAIRS OF MEDSHIELD MEDICAL SCHEME DATED 12 DECEMBER 2013	85-90
14	ANNEXURE "FA10" : ASSIGNMENT OF TRADE MARKS : OPINION	91-99

15	ANNEXURE "FA11" : DEED OF ASSIGNMENT MEMORANDUM OF AGREEMENT BETWEEN ALUMNI TRADING 264 (PTY) LTD AND MEDSHIELD MEDICAL SCHEME	100-110
16	ANNEXURE "FA12" : PROOF OF PAYMENT 05/11/2013	111
17	ANNEXURE "FA13" : PROOF OF PAYMENT 04/12/2013	112
18	ANNEXURE "FA14" : TAX INVOICE 30/10/2013	113
19	ANNEXURE "FA15" : PROOF OF PAYMENT 31/10/2013	114
20	ANNEXURE "FA16" MEDSHIELD MONTHLY MEETING WITH CURATOR (COUNCIL FOR MEDICAL SCHEMES) 21 JANUARY 2014	115-116
21	ANNEXURE "FA17" : MEDSHIELD MONTHLY MEETING WITH CURATOR (MEDSHIELD) 24 JANUARY 2014	117-119
22	ANNEXURE "FA18.1" : ENQUIRY IN TERMS OF SECTION 43 OF THE MEDICAL SCHEMES ACT : PAYMENTS IN CONTRAVENTION OF SECTIONS 26(5) AND 26(11) : AVOIR HEALTHCARE CONSULTANTS : BROKERAGE NUMBER ORG2577 : LEBOGANG ANNA MODIBA BR 24585 (COUNCIL FOR MEDICAL SCHEMES)	120
23	ANNEXURE "FA18.2" : MEDSCHIELD MARKETING AT TWO RIVERS MINE (PLATINUM HEALTH) : 13 JANUARY 2014	121

24	ANNEXURE "FA19" : ENQUIRY IN TERMS OF SECTION 43 OF THE MEDICAL SCHEMES ACT : PAYMENT IN CONTRAVENTION OF SECTIONS 26(5) AND 26(11) : AVOIR HEALTHCARE CONSULTANTS (MEDSHIELD) 24 JANUARY 2014	122
25	ANNEXURE "FA20" : CANCELLATION OF APPOINTMENT AS PROVISIONAL CURATOR : MEDSHIELD MEDICAL SCHEME (SAVAGE JOOSTE & ADAMS) 27 JANUARY 2014	123-124
26	ANNEXURE "FA21" : CANCELLATION OF APPOINTMENT AS PROVISIONAL CURATOR : MEDSHIELD MEDICAL SCHEME (ROUTLEDGEMODISE) 28 JANUARY 2014	125-126
27	ANNEXURE "FA22" : E-MAIL DATED 30 JANUARY 2014 FROM SAVAGE JOOSTE & ADAMS TO ROUTLEDGE MODISE	127-128
28	ANNEXURE "FA23" : E-MAIL DATED 4 FEBRUARY 2014 FROM LANGA ATTORNEYS TO COUNCIL FOR MEDICAL SCHEMES	129
29	ANNEXURE "24.1" : LETTER DATED 7 FEBRUARY 2014 FROM COUNCIL FOR MEDICAL SCHEMES TO LANGA ATTORNEYS : CANCELLATION OF APPOINTMENT AS PROVISIONAL CURATOR : MEDSHIELD MEDICAL SCHEME	130
30	ANNEXURE "24.2" : LETTER DATED 7 FEBRUARY 2014 FROM COUNCIL FOR MEDICAL SCHEMES TO CURATOR MEDSCHIELD MEDICAL SCHEME	131
31	ANNEXURE "FA25" : E-MAIL DATED 7 FEBRUARY 2014 FROM LANGA ATTORNEYS TO COUNCIL FOR MEDICAL SCHEMES	132-134

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GAUTENG DIVISION, PRETORIA

CASE NO: 12511/14

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

MEDSHIELD MEDICAL SCHEME

TB LANGA N.O.



First Respondent

Second Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the abovementioned applicant intends to make application to this Honourable Court at 10:00 on Tuesday the 25th day of February 2014 or so soon thereafter as Counsel may be heard for an order as follows:

1. Condoning the applicant's non-compliance with the forms, service and time limits provided for in the rules, in terms of the provisions of Rule 6(12)(a) and directing that the matter be heard as one of urgency;
2. Cancelling the appointment of the second respondent as provisional curator of the first respondent in terms of section 5(9) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 (*"the FI Act"*), upon the appointment of TEBOGO PHALENG (*"Phaleng"*) as provisional curator of the first respondent taking effect;
3. Appointing Phaleng as provisional curator of the first respondent, in terms of the provisions of Section 56(1) of the Medical Schemes Act 131 of 1998 (*"the*

MSA"), read together with Section 5(1) and (2) of the FI Act, in the stead of and upon the cancellation of appointment of the second respondent as provisional curator of the first respondent taking effect;

4. Confirming the powers and mandate of Phaleng as provisional curator of the first respondent, to be those granted to the second respondent in terms of the court orders issued by respectively the honourable Van der Merwe DJP on 2 October 2012 and Murphy J on 5 July 2013, in case number 56193/12, North Gauteng High Court, Pretoria.
5. Directing that the costs of this application on the scale between attorney and own client be paid by the second respondent in the event of opposition by the second respondent, and by the first respondent in the event of no opposition by the second respondent.
6. Granting the applicant such further and/or alternative relief as the above Honourable Court may deem fit.

TAKE NOTICE THAT the affidavit of **MONWABISI SABATHA MACDONALD GANTSHO**, with the annexures thereto will be used in support of this Application.

TAKE FURTHER NOTICE THAT the applicant has appointed the offices of the undersigned, at which address he will accept notice and service of all process and documents in these proceedings.

BE PLEASED TO TAKE FURTHER NOTE that if you intend opposing the relief sought in this Notice of Motion, you are required to:

(a) notify the applicant's attorney in writing by 16h00 on Thursday 13 February 2014; and

(b) file your Answering Affidavit, if any, by 16h00 on Tuesday 18 February 2014;

(c) in your Notice of Opposition appoint an address referred to in Rule 6(5)(b) at which you will receive notices and service of all documents in these proceedings.

Kindly enrol the matter for hearing accordingly.

DATED AT PRETORIA ON THIS 11th DAY OF FEBRUARY 2014.

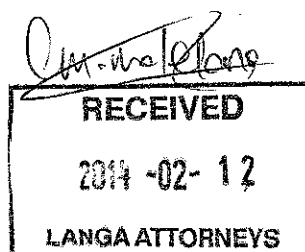
SAVAGE, JOOSTE & ADAMS INC
ATTORNEYS FOR APPLICANT
141 BOSHOFF STREET
CORNER MELK STREET
NIEUW MUCKLENEUK
PRETORIA
TEL: (012) 452 8200
FAX : (012) 452 8230
REF: M VAN STADEN/C666

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA

AND TO: MEDSHIELD MEDICAL SCHEME
FIRST RESPONDENT
288 KENT AVENUE,
RANDBURG,
GAUTENG
TEL: 086 000 2120
FAX: 011 716 7000



AND TO: THEMBA BENEDICT LANGA N.O.
SECOND RESPONDENT
181 JAN SMUTS AVENUE,
JOHANNESBURG
TEL: 011 447 3424
FAX: 011 447 2351



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

MEDSHIELD MEDICAL SCHEME

First Respondent

TB LANGA N.O.

Second Respondent

FOUNDING AFFIDAVIT

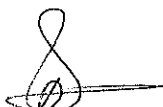
I, the undersigned

MONWABISI SABATHA MACDONALD GANTSHO

do hereby make oath and state:

INTRODUCTION

- 1 I am a major male and the Registrar of Medical Schemes of business address Block A, Eco Glades 2 Office Park, 420 Witch - Hazel Avenue, Eco Park, Centurion, Pretoria. I am the executive officer of the Council for Medical Schemes (*"the council"*) and manage the affairs of the council. I was appointed as such in terms of section 18(2) of the Medical Schemes Act, No 131 of 1998 (*"the MS Act"*). I am the applicant in this matter.



- 2 Unless it appears from the context, the facts herein contained are within my own knowledge and belief and are true and correct.
- 3 The first respondent is **MEDSHIELD MEDICAL SCHEME** (*"the scheme"*), a medical scheme duly registered as such, as defined in section 1 of the MS Act, having its principal place of business at 288 Kent Avenue, Randburg, Gauteng.
- 4 The scheme's business is that of undertaking liability in return for a premium or contribution, and thereby to make provision for:
- 4.1 the granting of assistance to its members in defraying expenditure incurred by the members and their dependents in connection with health care services as provided for and in accordance with its rules; and
- 4.2 the rendering of the health services contemplated in its rules to members and their dependents, either by the scheme itself or by any other supplier, or group of suppliers of a service in association with or in terms of an agreement with the scheme.
- 5 The scheme is registered as an open medical scheme, open for membership by any member of the public. The scheme has 80 000 principal members and a further 94 000 beneficiaries. In total the scheme grants medical scheme benefits to 174 000 lives, who are affected by the management of the



scheme.

- 6 The scheme has reserves of R1,2 billion and receives annual premiums in the amount of R2,5 billion. The scheme is an extremely public institution with a social function.
- 7 The scheme is a body corporate capable of suing and being sued in its own name, in terms of the provisions of the MS Act. It has used the name "Medshield" to do business as a medical scheme since 1 March 1996.
- 8 The second respondent is THEMBA BENEDICT LANGA Nomine Officio, a major male attorney, in his capacity as provisional curator of the scheme, with business address at 181 Jan Smuts Avenue, Johannesburg.

RELIEF

- 9 In this urgent application I inter alia seek the following relief:
 - 9.1 Cancelling the appointment of the second respondent as provisional curator of the first respondent in terms of section 5(9) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 (*"the FI Act"*), upon the appointment of TEBOGO PHALENG (*"Phaleng"*) as provisional curator of the first respondent taking effect;
 - 9.2 Appointing Phaleng as provisional curator of the first respondent, in terms of



the provisions of Section 56(1) of the Medical Schemes Act 131 of 1998 (*the MSA*), read together with Section 5(1) and (2) of the FI Act, in the stead of and upon the cancellation of the appointment of the second respondent as provisional curator of the first respondent taking effect;

9.3 Confirming the powers and mandate of Phaleng as provisional curator of the first respondent, to be those granted to the second respondent in terms of the court orders issued by respectively the honourable Van der Merwe DJP on 2 October 2012 and Murphy J on 5 July 2013, in case number 56193/12, North Gauteng High Court, Pretoria.

10 The basis upon which I seek the aforesaid relief is set out below. I hold the opinion in terms of the provisions of section 56(1) of the MS Act that the appointment of Phaleng as provisional curator of the scheme is in the interest of the beneficiaries of the scheme and that it is desirable to do so. I verily believe that good cause has been made out in terms of section 5(1) and (9) of the FI Act for the cancellation of the appointment of the second respondent as provisional curator of the scheme and for the appointment of Phaleng as the provisional curator of the scheme in the second respondent's stead.

11 I verily submit that Phaleng is a suitable and competent person to be appointed as provisional curator of the scheme and to fulfill the functions and mandate associated with such position, as set out in the Notice of Motion.

Phaleng has agreed to be appointed as provisional curator and to comply with the terms of the order sought. I attach hereto as "FA1.1" Phaleng's consent



to being appointed as provisional curator and as "FA1.2" his curriculum vitae.

As can be noted from the latter Phaleng has a host of experience, which makes him eminently suited to occupy the position as provisional curator.

RELEVANT FACTS PERTAINING TO CURATORSHIP ORDER

12 On 2 October 2012 the honourable Van der Merwe DJP issued an order in case number 56193/12, North Gauteng High Court, Pretoria, in terms whereof the second respondent was appointed as provisional curator of the scheme. I attach hereto as "FA2" a copy of the court order in terms whereof the second respondent was appointed as provisional curator of the scheme.

13 As can be noted from "FA2", the honourable Van der Merwe DJP determined the powers and mandate of the second respondent to be the following:

6 That pending the outcome of the return date of the rule nisi, and subject to the control of the applicant, the provisional curator be and is hereby –

6.1 authorised to take immediate control of, and in the place of the board of trustees, manage the business and operations of and concerning the respondent, together with all assets and interests relating to the business of the respondent, in accordance with the provisions of the MS Act and the respondent's rules;

6.2 vested with all powers of control and management which would ordinarily be vested in and exercised by the board of trustees or principal officer of the respondent, whether by law or in terms of the rules of the respondent;



- 6.3 directed to give consideration to the best interests of the members of the respondent;
- 6.4 directed to exercise the powers vested in him with the view to conserving the business of the respondent and not without the leave of the applicant to alienate or dispose of any of the property of the respondent, save to the extent and for the purposes set out hereunder;
- 6.5 directed to take control of the cash, cash investments, shares and other securities, as well as of all other assets owned, held or administered by or on behalf of the respondent;
- 6.6 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of the business and operations of the respondent, and to pay same from the assets owned, administered or held by or on behalf of the respondent;
- 6.7 authorised to pay claims or other benefits to the respondent's members, having regard to the rules of the respondent and its financial position;
- 6.8 permitted to engage such assistance of a legal, accounting, actuarial, administrative or other professional nature, as he may reasonably deem necessary for the performance of his duties in terms of this order, and to defray reasonable charges and expenses thus incurred from the assets owned, administered or held by or on behalf of the respondent;
- 6.9 authorised to institute or prosecute any legal proceedings on behalf of the respondent and to defend any action against the respondent;
-
- 6.10 authorised to invest such funds as are not required for the immediate purposes of the business, with an institution or financial instruments as he may regard financially sound



and appropriate;

6.11 authorised to take control of and to operate or close existing banking accounts of the respondent whether conducted in South Africa or off-shore, and to open and operate any new banking accounts for the purposes of the curatorship;

6.12 authorised to investigate allegations of financial and governance irregularities set out in the founding affidavit attached to this notice of motion and to recommend the appropriate action to be taken to address same and where necessary, recommend action to be taken against any person who may be guilty of misconduct or a crime;

6.13 authorised, at any time during his term of office, to apply on 48 hours' notice or on an ex parte basis for any amendment or amplification of the powers granted to him in terms hereof in the event that it is necessary to amend or amplify such powers for the effective exercise of his powers and responsibilities; and

6.14 authorised to be entitled to reasonable remuneration and disbursements, as might be allowed by agreement with the applicant, alternatively, failing such agreement as may be determined later by this Court, and that such remuneration shall be paid by the respondent and shall be a first charge upon the respondent's assets.

14 The irregularities giving rise to the issue of the provisional curatorship order (*"the provisional curatorship order"*), coupled to a rule nisi, by Van der Merwe DJP on 2 October 2012 were inter alia the following:

14.1 The scheme's chairperson, Mr T Mabeta (*"Mabeta"*) acted as Chief Executive Officer (*"CEO"*) of the scheme over the period September 2011 to February 2012 and received a monthly salary of R99 290. Mabeta's appointment as acting CEO over the period September 2011 to February 2012 was contrary



to the provisions of rule 18.8.4, determining that the Principal Officer (who is the executive officer of the scheme in terms of rule 21.2) shall not serve as trustee.

14.2 Mabeta was not a member of the scheme at the time of election as trustee. This was contrary to the rules of the scheme, which provide for election of BOT members by the members of the scheme at the AGM, from amongst the total membership.

14.3 The scheme concluded an agreement with Sapling Trade and Invest 41 (Pty) Ltd ("*Sapling*") to perform "*distribution services*". The scheme obtained no real value from the agreement with Sapling over the period January 2012 to June 2012 an amount of R22 104 476-52 was paid to Sapling.

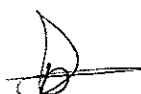
15 On 25 January 2013 Phatudi J handed down an order and issued a judgment of Murphy J, in terms whereof he confirmed the provisional curatorship order issued by Van der Merwe DJP on 2 October 2012. I attach as "**FA3.1**" a copy of the court order in terms whereof the provisional curatorship order was confirmed and a final order was made in terms of paragraph 8 of the notice of motion. I attach as "**FA3.2**", the said notice of motion. The issues identified by Murphy J, which led to the confirmation of the provisional curatorship order, included the following:

15.1 The Scheme consistently failed to comply with regulatory demands in respect of its contraventions of the MSA;



- 15.2 The trustees of the scheme (*"the trustees"*) demonstrated a flagrant disregard of the provisions of the MSA and the rules of the Scheme;
- 15.3 The election of trustees that occurred at the scheme's Annual General Meeting held on 28 June 2012 was irregular; and
- 15.4 The relationship with Sapling has conflicted the trustees to such an extent that the governance of the Scheme by the trustees has become untenable
- 16 On 5 July 2013 the scheme's trustees, who had intervened in the matter prior to confirmation of the provisional curatorship order, were granted leave to appeal against the confirmation of the provisional curatorship order by Murphy J. I attach as "FA4", a copy of the judgment in terms whereof leave to appeal was granted. In terms thereof the provisional curatorship order granted by Van der Merwe DJP on 2 October 2012 was revived and extended pending the outcome of the appeal in respect of whether a final curatorship order should be granted.
- 17 Appeal was subsequently noted to the Supreme Court of Appeal in Bloemfontein under its case number 628/2013. The appeal is currently pending, with heads of argument having been filed by the parties thereto, and a date of hearing is awaited.

RELEVANT STATUTORY PRESCRIPTS



18 The MSA has the following relevant provisions:

18.1 Section 21 determines as follows:

No person shall, without the consent of the Registrar, apply to his or her business a name which includes the words 'medical scheme' or any other name which is calculated to indicate, or is likely to lead persons to believe that he or she carries on the business of a medical scheme, unless such business is registered under this Act.

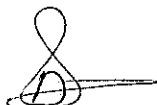
18.2 Section 21A(1) provides for the following:

(1) It is an offence to market, advertise or in any other way promote the business of any person in a manner likely to create the impression that such person conducts, will conduct, or is entitled to conduct, the business of a medical scheme unless that person is registered as a medical scheme in terms of section 24 (1) of this Act.

18.3 Section 56(1) of the MSA determines as follows:

The Registrar may, notwithstanding the provisions of section 52 and 53, if he or she is of the opinion that it is in the interest of beneficiaries or that it is desirable to do so, because material irregularities have come to his or her notice, or because a medical scheme is not in sound financial condition or as a result of an inspection of the affairs of a medical scheme, apply, with the concurrence of the Council, to the High Court, for the appointment of a curator to take control of and to manage the business of that medical scheme.

18.4 Section 57(6) has the following relevant provisions:



(6) The board of trustees shall-

- (a) take all reasonable steps to ensure that the interests of beneficiaries in terms of the rules of the medical scheme and the provisions of this Act are protected at all times;
- (b) act with due care, diligence, skill and good faith;
- (c) take all reasonable steps to avoid conflicts of interest;

19 The FI Act has the following relevant provisions:

19.1 Section 2 determines as follows:

A director, member, partner, official, employee or agent of a financial institution or of a nominee company who invests, holds, keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property-

- (a) must, with regard to such funds, observe the utmost good faith and exercise proper care and diligence;
- (b) must, with regard to the trust property and the terms of the instrument or agreement by which the trust or agency in question has been created, observe the utmost good faith and exercise the care and diligence required of a trustee in the exercise or discharge of his or her powers and duties; and
- (c) may not alienate, invest, pledge, hypothecate or otherwise encumber or make use of the funds or trust property or furnish any guarantee in a manner calculated to gain directly or indirectly any improper advantage for himself or herself or for any other person to the prejudice of the financial institution or principal concerned.

19.2 Section 5 inter alia states as follows:

- (1) The registrar may, on good cause shown, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole



or any part of, the business of an institution.

- (2) Upon an application in terms of subsection (1) the court may-
 - (a) provisionally appoint a curator to take control of, and to manage the whole or any part of, the business of the institution on such conditions and for such a period as the court deems fit; and
 - (b) simultaneously grant a rule nisi calling upon the institution and other interested parties to show cause on a day mentioned in the rule why the appointment of the curator should not be confirmed.
 - (3) On application by the institution the court may anticipate the return day if not less than 48 hours' notice of such application has been given to the registrar.
 - (4) If at the hearing pursuant to the rule nisi the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.
 - (5) The court may make an order with regard to-
 - (a) the suspension of legal proceedings against the institution for the duration of the curatorship;
 - (b) the powers and duties of the curator;
 - (c) the remuneration of a curator appointed provisionally under subsection (2) (a) or finally under subsection (4);
 - (d) the costs relating to any application made by the registrar under subsection (1);
 - (e) the costs incurred by the registrar in respect of an inspection of the affairs of the institution concerned in terms of the Inspection of Financial Institutions Act, 1998 (Act 80 of 1998); or
 - (f) any other matter which the court deems necessary.
 - (6) The curator acts under the control of the registrar who made the application under subsection (1), and may apply to that registrar for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the institution.
-
- (7) The curator must furnish the registrar of the institution concerned with such information concerning the affairs of that institution as the registrar may require.
 - (8)(a) Any person, on good cause shown, may make application to the court to set aside or



alter any decision made, or any action taken, by the curator or the registrar with regard to any matter arising out of, or in connection with, the control and management of the business of an institution which has been placed under curatorship.

(b) A person who makes application contemplated in paragraph (a) must give notice of not less than 48 hours of such application to the registrar or the curator, as the case may be, and such registrar or curator is entitled to be heard at such application.

(9) The court may, on good cause shown, cancel the appointment of the curator at any time.

GOOD CAUSE

20 The reasons why I contend that good cause has been made out in terms of section 5(9) of the FI Act for the cancellation of the second respondent's appointment as provisional curator, and, as a corollary thereof, in terms of section 5(1) of the FI Act for the appointment of Phaleng as provisional curator of the scheme, are in main the following:

20.1 The second respondent has shown a lack of candour regarding an important transaction concluded by him to "acquire" the trademark "Medshield". An amount of R10 million was paid by the scheme to "acquire" said trademark, with no discernable benefit for the scheme. In doing so the second respondent has furthermore shown a lack of ability in exercising his functions as provisional curator.

20.2 The relationship between me and the second respondent has broken down. He accuses officials of my office tasked to interact with and exercise control



over him of all kinds of impropriety and exhibits a lack of faith in and willingness to co-operate with these officials. This in itself places a severe impediment in the way of exercising control over the second respondent.

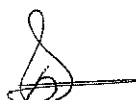
20.3 In terms of Section 5(6) of the FI Act the provisional curator acts under my control as Registrar of Medical Schemes. In terms of the provisions of the provisional curatorship order the provisional curator exercises his powers "*subject to (my) control*" as Registrar of Medical Schemes. However, the second respondent refuses to exercise his powers as provisional curator "*subject to (my) control*".

20.4 The second respondent has shown himself to be conflicted insofar as his remuneration as provisional curator and services rendered by his firm, Langa Attorneys, are concerned.

20.5 The second respondent refuses to carry out, or neglects to carry out, his duties. He refuses to answer queries raised regarding complaints laid in respect of his management of the scheme.

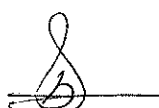
20.6 The second respondent exhibits an emotional immaturity. This is worrisome, bearing in mind that he is in control of R1,2 billion of public funds.

21 I shall now deal with the individual grounds which make-up the good cause ~~alleged against the respondent~~ for the cancellation of the second respondent's appointment as provisional curator.



The Transaction to "acquire" the Trademarks "Medshield" and the meetings of 6 November 2013 and 20 December 2013

- 22 In terms of paragraph 8.5 of the court order ("FA3") confirming the provisional curatorship order, the second respondent was directed to report to me on the scheme's affairs on a monthly basis. After the granting of leave to appeal and upon the scheme reverting to provisional curatorship, I required such monthly reporting to continue. In fact, even before the confirmation of the provisional curatorship order I required monthly reporting.
- 23 As the first respondent has R1,2 billion of the scheme's reserves under his control, deals with annual premiums of R2,5 billion and the scheme extends benefits to 174 000 members and beneficiaries, I regard it as vitally important that the first respondent reports to me on a monthly basis, to exercise my control over the provisional curatorship. The provisional curator exercises an extremely public and social function.
- 24 Mr Stephen Mmatli ("Mmatli"), the head of Research and Monitoring at the council, and Adv Jaco Lubbe ("Lubbe"), a senior investigator in the employment of the council, were tasked by me to interact with and exercise control over the second respondent. The second respondent is required to meet with these gentlemen on a monthly basis, where he presents his report for a particular month, as well as interact with them and other council employees on a regular basis.



25 These monthly reports are important. Various units in the council rely on the monthly reports to identify any matters of concern and to exercise control and furnish the scheme with guidance, where necessary. Furthermore, there is inevitable report-back on various items at these monthly meetings, which items are carried forward to successive meetings. The regulatory control exercised over the scheme is planned around these monthly report-back meetings.

26 In his monthly report for November 2013, attached as "FA5", the second respondent reported that:

"4.1 Medshield entered into a Deed of Assignment with Alumni Trading 264 (Pty) Ltd for the purchase of the trademark "Medshield".

4.2 The work mark "Medshield" has been registered and entered in the Register of trade Marks as follows:

4.2.1 2010/0052 in class 35 (advertising, business management, business administration, office functions, offering for sale and the sale of goods in retail wholesale trade);

4.2.2 2010/00523 in class 36 (insurance, financial affairs, monetary affairs, real estate affairs);




4.2.3 2010/00524 in class 41 (education providing of training, entertainment, sporting and cultural activities.

4.3 The trade marks were granted on 13 October 2011 and have been registered for a period of ten years".

27 The second respondent discussed his report for November 2013 ("FA5") with Mmatli and Lubbe and certain other officials from my office which included Mr. Craig Burton-Durham ("Burton-Durham"), head of legal services on 6 November 2013. He indicated that the trademark "Medshield" was bought for an amount of R10 million. I refer to Mmatli and Lubbe's confirmatory affidavits attached as respectively "FA6.1" and "FA6.2".

28 During the meeting Burton-Durham expressed misgivings with the scheme "buying" this trademark for an amount of R10 million, under circumstances where the scheme, at the very least, owns the common law rights to the Medshield trademark. He advised that it would be prudent for the curator to obtain an expert legal opinion from a firm of intellectual property lawyers such as Spoor and Fisher. In response thereto the second respondent indicated that the purchase had not been concluded and that he would obtain an expert legal opinion on the trademark rights vesting in the scheme in its name by virtue of it having prior use of the trademark. It was further agreed that the second respondent would obtain my office's approval before making any commitment as far as the conclusion of the purchase of the trade mark is concerned.



29 The discussions of the 6th of November 2013 were confirmed by Mmatli under cover of correspondence dated 8 November 2013, attached hereto as "FA7".

30 During a follow-up meeting held with the second respondent on 20 December 2013 the second respondent discussed his reports dated respectively 25 November 2013 and 12 December 2013 (attached as respectively "FA8" and "FA9"). In "FA8" the second respondent indicated that he was in the process of obtaining an expert legal opinion with regards to the use of the Medshield trademark.

31 In "FA9" the second respondent indicated that he had obtained a legal opinion on the Medshield trademarks (the said legal opinion was obtained from Adv MTA Costa, is dated 6 December 2013 and is attached as "FA10"). As part of "FA9" the second respondent also provided agreements entered into by the scheme, including the agreement (*"the assignment agreement"*) for the assignment of the *"Medshield"* trademarks, which agreement is attached as "FA11".

31 As can be noted from "FA11", the following transaction purportedly occurred:

31.1 Alumni Trading 264 (Pty) Ltd (*"Alumni"*) assigned to the scheme *"all of (Alumni's) right, title and interest in and to the (trademarks 'Medshield'), together with the goodwill of the business symbolized by the (said trademarks)"* (own emphasis).



31.2 The consideration which the scheme shall pay for the assignment of the trademarks is R10 million, *"it being agreed that the aforesaid consideration constitutes fair and sufficient consideration"*.

31.3 Payment of the amount of R10 million, shall be effected as follows:

31.3.1 The amount of R7 million shall be paid on the signature of the agreement (the agreement was signed on 17 October 2013).

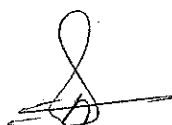
31.3.2 The amount of R3 million shall be paid on registration of the assignment of the trademarks on 15 November 2013, whichever is the sooner.

31.4 The assignment is subject to the suspensive condition that the scheme makes payment of the amount of R10 million in full on or before 15 November 2013.

32 Prior to the meeting of 20 December 2013, Lubbe learnt that:

32.1 The scheme had paid the amount of R7 million already on 5 November 2013 (I attach as **"FA12"**, a copy of the proof of payment of the amount of R7 million) as well as the balance of R3 million on 4 December 2013 (I attach as **"FA13"**, a copy of the proof of payment of the latter amount).

32.2 The second respondent's firm, Langa Attorneys, had invoiced the scheme in the amount of R250 000 for *"Attending to Governance Implementation project"*



and Secretariat work in respect of Medshield Medical scheme". I attach as "FA14", a copy of said invoice dated 30 October 2013 and as "FA15", a copy of the proof of payment, indicating that the scheme had made payment on 31 October 2013.

33 During the 20 December 2013 meeting Lubbe and Mmatli challenged the second respondent on:

33.1 His not disclosing during the 6 November 2013 meeting that he had already signed the assignment agreement and had already paid the amount of R7 million;

33.2 Having paid the full quantum of R10 million, despite indicating during the meeting of 6 November 2013 that the purchase had not been concluded and that he would obtain my office's approval before making any commitment as far as the conclusion of the purchase of the trade mark is concerned;

33.3 Using Langa Attorneys for work of the scheme, in the amount of R250 000, as this presents a conflict of interest (I may add that the second respondent already receives remuneration in the amount of R175 000 per month, as agreed with myself, from the scheme, to perform his duties as provisional curator; the said amount of R250 000 is not part of his remuneration to perform duties as provisional curator); in response to the challenge the second respondent reacted angrily, alleging that "*there's no need to be vindictive*"; the second respondent denied a conflict of interest and alleged



that he had to urgently obtain advice on the matter for which the invoice had been rendered; although advocating the exceptional circumstances that had allegedly warranted using Langa Attorneys, the second respondent could not recall the precise nature of the matter for which advice had been sought; and

33.4 Entering into long-term contracts which bound the scheme, even after expiration of the second respondent's term of office; this would hamstring a new board of trustees who may disagree with the value added for the scheme and may wish to have the contracts terminated but would be unable to do so, without the scheme incurring damages claims; in reaction the second respondent alleged that these contracts added value due to economies of scale and that he was not required to report to my office on all the details of his actions.

34 The discussions held during the meeting of 20 December 2013 were confirmed by Mmatli by means of correspondence dated 21 January 2014 addressed to the second respondent, attached as "FA16".

35 In response to "FA16", the second respondent addressed correspondence dated 24 January 2014, attached as "FA17", wherein he inter alia made the following allegations:

Trademark Transaction:

35.1 ***"Your intention is to stoke emotions and falsehoods around the***



existence of a contract that the scheme, through the office of the curator, has correctly decided to enter into" (own emphasis).

35.2 "It is clear that if Stephen (Mmatli) and Jaco (Lubbe) were the mind of the scheme, they would have probably handled the matter differently from Themba Langa (the second respondent). However, this is not for you to stoke a fight about something that the regulator was not seized with, at the time the decision was made. The fact that the regulator, not the registrar, second guesses the curator does not necessarily mean the regulator to be correct or righteous. **Stephen, you are simply seeking to usurp the duty of the curator. The regulator should regulate and not pick fights about business decisions that do not concern the regulator. I don't understand why you and Jaco are always on a warpath against me**" (own emphasis).

35.3 "I understand that **there has always been an urgent anxiety to remove me as curator, for emotions which are known to you and Jaco. It is unfortunate that as a regulator you have made a commitment to always stoke a fight** and tension whenever you don't like my business decisions. By the way, you don't have to like my business decisions, even when you don't like my business decisions that do not make my business decisions to be what you perceive them to be because it is simply not your call to decide on such issues" (own emphasis).

Utilisation of Langa Attorneys:



35.4 ***"I just don't understand what makes you to be so desperate to fabricate falsehood. Probably to your defence, you deliberately failed to record what I told you which is not entirely surprising given your single-mindedness and negativity/hostility towards me. I have a duty towards the scheme, as per the court order, and it is incumbent on me to undertake whatever is reasonable and fair to execute my duties as a Provisional Curator. Notwithstanding the foregoing, I expect you to continue to hatch more dark thoughts and motives as this is how you seem to establish your identity"*** (own emphasis).

Entering into long-terms Contracts

35.5 "It is within my competence and authority, as per the court order, to enter into contracts with third parties for the benefit of the scheme. **The fact that you and Jaco do not like it does not colour the transaction. What it actually does, is further displays the utmost hatred and misdirection of the mind against me"** (own emphasis).

Good Cause: November 2013 to January 2014

36 The meetings of 6 November 2013 and 20 December 2013, as well as the occurrences preceding and subsequent thereto, including the second respondent's correspondence dated 24 January 2014 ("FA17"), indicate that good cause exists for the removal of the second respondent as provisional curator of the scheme:



36.1 The position of provisional curator calls for the utmost good faith and the exercise of proper care and diligence. By virtue of the second respondent being less than frank (as indicated above) regarding the facts surrounding the assignment agreement, an agreement which led to a substantial amount, R10 million, of scheme funds being spent, this utmost good faith has irredeemably been shattered.

36.2 The second respondent has shown himself as not exercising proper care and diligence:

36.2.1 The second respondent is not an intellectual property lawyer, yet enters into a R10 million transaction without knowing or having established whether the transaction would add any value for the scheme. The amount of R10 million is substantial, yet the second respondent spends it, without knowing whether he is obliged to do so, in order to protect the scheme's business.

36.2.2 By virtue of the provisions of Section 21 and 21A of the MSA, Alumni was precluded from using the name "*Medshield*". The registered trademarks were worthless yet the second respondent buys them.

36.2.3 The second respondent did not possess the authority to alienate R10 million of the scheme's funds. Spending R10 million for a worthless trademark is not incurring a reasonable expense which is necessary or expedient for the curatorship and control of the business and operations of the scheme.



36.3 The trust relationship between myself and the second respondent has irretrievably broken down. He lodges a scurrilous and defamatory attack on well-respected employees of the council and exhibits a lack of faith in and willingness to co-operate with these officials. I am unable to henceforth in any manner co-operate with the second respondent regarding the exercise of any of my regulatory duties.

36.4 The second respondent "*contracts*" his own firm to do work in the amount of R250 000. He is unable to specify what work has been done to justify payment of such fee. He demonstrates a lack of insight into the fact that he is conflicted in contracting his own firm. He exhibits a lack of good faith and is conflicted.

36.5 The second respondent refuses to exercise his powers as provisional curator subject to my control. He accuses Mmatli and Lubbe as "*usurping the duty of the curator*".

36.6 Instead of acting in the best interest of the scheme and its beneficiaries, the second respondent does the converse, by entering into long-term contracts with suppliers. The second respondent's position is a transient one. He is supposed to restore the scheme to sound management and hand over the scheme to a duly elected board of trustees. Instead of acting in terms of his transient mandate, he transgresses same and inhibits the ability of the trustees, to whom he is supposed to hand-over management of the scheme,



to properly manage the scheme.

- 36.7 In his correspondence ("FA17") the second respondent exhibits an emotional immaturity. Bearing in mind that he is in control of R1,2 billion of public funds and has to take decisions that will affect the lives of 174 000 beneficiaries, he is clearly not suited to the task of provisional curator.

The second respondent refuses to carry out, or neglects to carry out, his duties

- 37 On 17 January 2014 Mmatli addressed a letter (attached as "FA18.1"), to the second respondent, in terms whereof he asked for the second respondent's response to allegations levelled by Platinum Health under cover of a letter dated 13 January 2014 (attached as "FA18.2").

- 38 I attach the second respondent's response dated 24 January 2014 as "FA19".
In terms thereof the second respondent alleges as follows:

"I honestly cannot believe that as a regulator, you can conclude on the basis of a single flimsy, false and one-sided information which is contained in the letter dated 13 January 2014 from Platinum Health. It is incompatible for the regulator to summarily decide that the basis of a section 43 enquiry has been satisfied without us being heard. This is further complicated by the fact that the owner of Platinum Health is a friend of

Jaco Lubbe.



It is unfortunate that you are chronically biased and hateful against me, to the extent of omitting important regulatory steps that you have to adhere to before making up your mind on whether or not the complaint deserves to be considered as a section 43 enquiry or not.

39 Once again the second respondent imputes unfounded improper motive to employees of the council. Once again he lodges a scurrilous and defamatory attack on employees of the council. His actions call for censure by means of attorney and own client costs, in the event of his opposition hereof.

40 Also, the second respondent refuses to comply with the request to answer queries. He neglects to carry out his duties.

41 Although the second respondent alleges that he will revert after receiving legal advice, it is manifest that he does not wish to answer my query, which he is obliged to do in terms of Section 5(7) of the FI Act.

42 Against the background of the above I submit that good cause has been made out in terms of section 5(9) of the FI Act for the cancellation of the second respondent's appointment as provisional curator and in terms of section 5(1) of the FI Act for the appointment of Phaleng as provisional curator of the scheme.

URGENCY (RULE 6(12)(6))



43 After receipt of "FA17" dated 24 January 2014 from the second respondent, my attorneys of record addressed correspondence dated 27 January 2014, attached as "FA20", to the second respondent, stating the following:

- "2. On 2 October 2012 you were appointed as provisional curator of Medshield Medical Scheme ("Medshield") in terms of the provisions of Section 56(1) of the Medical Schemes Act 131 of 1998 ("the MS Act"), read together with Section 5(1) and (2) of the Financial Institutions (Protection of Funds) Act 28 of 2001 ("the FI Act"), by order of court.
3. In terms of Section 5(6) of the FI Act you act under the control of our client. In terms of Section 5(9) of the FI Act the court may on good cause shown cancel the appointment of a curator.
4. Our client holds the view that recent events concerning the exercise of your powers have manifested good cause for your removal. These include concluding the transaction for the "acquisition" of the Medshield trademark and the lack of candour in reporting thereon to our client. In addition you fail to act under the control of our client and the relationship between our client and yourself has broken down.
5. Our client believes that in the best interests of the members of Medshield you should resign and a new provisional curator be appointed in your stead. Our client affords you until 16h00 on Wednesday 29 January 2014 to indicate whether you intend resigning on the appointment of a new



provisional curator taking effect, failing which our client intends lodging an urgent application calling for your removal”.

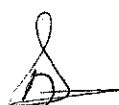
44 In response the second respondent's then attorneys, Messrs Routledge Modise, alleged under cover of a letter dated 28 January 2014, attached as “FA21”, that the second respondent is not provided with sufficient detail to make an informed decision on whether or not to resign. The said attorneys also called for further time to consider the demand to resign as provisional curator.

45 Under cover of a letter dated 30 January 2014, attached as “FA22”, my attorneys informed the second respondent's attorneys that he was afforded till 16h00 on 31 January 2014 to resign, that I have furnished my reasons demanding that he resigns as provisional curator and that I am not prepared to expand on such reasons in correspondence.

46 Under cover of an e-mail dated 4 February 2014 addressed to Mmatli, attached as “FA23”, the second respondent indicated that he has “*made up (his) mind to resign with effect from the 28 February 2014*” and that he will “*approach (Mmatli) on the handover procedure and all attendant issues*”.

47 Mmatli wrote two letters dated 6 February 2014 to the second respondent, attached as respectively “FA24.1” and “FA24.2”. In “FA24.1” Mmatli stated

inter alia the following:



"Kindly note that the Registrar is busy finalising the application calling for the cancellation of your appointment as provisional curator. However, in order to finalise same, your resignation on 25 February 2014 (Tuesday is the date for the hearing of applications in the High Court), taking effect upon the appointment of a new provisional curator, is required.

The reason for our request lies in the following:

- 1. Your notification that you "have made up" your mind to resign, arguably does not equate to a resignation, only to an intention to do so.*
- 2. It is imperative that your resignation only takes effect upon the appointment of a new provisional curator. Failing to specify same would lead to an interregnum and leaving the scheme without management control.*

We therefore look forward to receiving your formal resignation in terms of the above, as a matter of urgency".

48 In response the second respondent wrote an e-mail dated 7 February 2014, attached as "FA25", alleging:

"I disagree with your view and intend to vehemently oppose the envisaged application of the 25th February 2014 as it is premature and misleading"

49 I respectfully submit that the matter is urgent. Although the second respondent

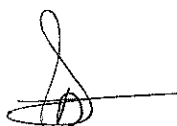


has indicated that he will resign, he has not indicated that he will resign upon the appointment of his replacement as provisional curator taking effect. Should his undertaking be carried out it will leave the scheme without management control until the appointment of a replacement provisional curator.

50 Further, as is manifest from his correspondence the second respondent vacillates between resigning and not. For the reasons indicated above, it is imperative that he be removed as provisional curator of the scheme. I am concerned about the interests of the scheme's members, should he not be removed as provisional curator. I also do not want him to oversee any election of trustees, as I have lost faith in his ability to properly manage the scheme and I do not want him to undertake such an important role.

51 It is imperative that the urgent application calling for the cancellation of the second respondent's appointment as provisional curator be set-down for hearing, prior to his resignation taking effect, to preclude the scheme from being without management control by a provisional curator.

52 Further, even though the second respondent has indicated that he will resign, he may only be removed and a new provisional curator be appointed, by way of court order. Without a court order being granted in terms of Section 5(9) of the FI Act, the second respondent will remain the provisional curator of the scheme.

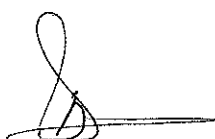


53 - Also, although the second respondent has indicated that he will resign, it will be irresponsible of me not to take pro-active steps to ensure that the cancellation of his appointment is not solely dependent on his undertaking to resign. The second respondent has undertaken that he will approach Mmatli on the "*handover procedure and all attendant issues*". Should agreement not be reached on same this may have a detrimental effect on the resignation of the second respondent taking effect.

54 The scheme is possessed of accumulated funds of more than R1,2 billion and receives annual premiums in the amount of R2,5 billion. The scheme has 174 000 beneficiaries. Should no provisional curator be appointed upon the second respondent's resignation as provisional curator taking effect, it places the scheme and the funds under its control at grave risk, with no accountable management in place. The lives of 174 000 beneficiaries would literally be at risk.

55 Accordingly it is in the public interest that Phaleng be appointed as provisional curator of the scheme in the stead of and upon the cancellation of the appointment of the second respondent as provisional curator of the scheme taking effect. It would leave a void in the scheme's management should the relief as requested not be granted.

56 I have been advised that an application in the normal course of events and on the opposed roll would only be heard in the second half of the year.



57 Assuming that the "*handover procedure and all attendant issues*" lead to the second respondent complying with his undertaking to resign and that an unopposed application is feasible, a hearing in the normal course of events on the unopposed court roll would only take place after February 2014. This would leave the scheme without effective and accountable management for a period of time. If relief is only obtained at said stage the interests and rights of the beneficiaries and members of the scheme will be irreparably harmed during the period that the scheme is without effective and accountable management.

58 I therefore respectfully submit that the matter is urgent and as is apparent from the foregoing reasons I will not be afforded substantial redress at a hearing in due course.

59 I therefore respectfully submit that the relief as prayed, be granted.



DEPONENT

THUS DONE AND AFFIRMED TO AT PRETORIA ON THIS 11 DAY OF February 2014 BY THE DEPONENT WHO ACKNOWLEDGES -

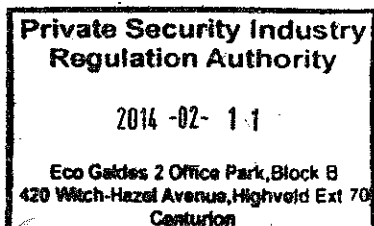
1. THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT;
2. THAT IT IS TO THE BEST OF HIS KNOWLEDGE TRUE AND CORRECT;
3. THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH



AND

4. THAT HE CONSIDERS THE OATH TO BE BINDING ON HIS CONSCIENCE.

Before me,



Signature
2014-02-11
projector
 COMMISSIONER OF OATHS.
 PSIRA
 420 WITCH-HAZEL AVENUE
 HIGHVELD EXT 70
 CENTURION.

(7 632w)

Signature

"FALL"
38

Dr Monwabisi Gantsho
The Registrar & Chief Executive
Council for Medical Schemes
420 Witch-Hazel Street
Ecopark
Centurion
11 February 2014


Dear Sir

RE: APPOINTMENT AS PROVISSIONAL CURATOR OF MEDSHIELD MEDICAL SCHEME

The above matter refers.

I herein consent to my appointment by court as the provisional curator of Medshield Medical Scheme as recommended by the Registrar of Medical schemes.

Yours truly,


Dr Lebogo Phaleng





"FA1.2"

39



Tebogo Phaleng

382 Dikkop Road, Featherbrooke Estate,
Featherbrooke, Mogale City 1739, Republic of South Africa
Mobile: +27 79 384 2404
E-mail: tebogo@coalesce.co.za

PERSONAL VISION AND AMBITION:

Making a positive, large-scale contribution to South African society through the creation of high quality, affordable integrated healthcare interventions, products and self-sustaining healthcare ecosystems.

EDUCATION:

MBChB (Bachelor of Medicine and Bachelor of Surgery)
University of Natal, 1999.

EMPLOYMENT HISTORY

2013 – present

Coalesce Holdings (Pty) Ltd.

Designation:

Executive Director: Strategy, Policy and Commercial Affairs

- Founding partner
- Coalesce is a healthcare advisory and business support agency that uses health industry knowledge and data to facilitate improvements in access and affordability of quality healthcare for all South Africans. The company provides strategic advice, research, business development, project management and risk management support to health entities and institutions in the public and private sector.

Responsibilities

- Development of integrated healthcare delivery models.
- Strategic roadmap and business toolkit development.
- Market access strategy development including market research, competitor and business feasibility analysis.
- Policy analysis and alignment.
- Concept, proposition and product development.
- Technical clinical and health informatics support.
- Risk management and contracting.

Recent Activity and Projects

- Market review on Private Healthcare Administrators in South Africa.
- Development of an access innovation strategic roadmap for a major private sector healthcare funder.
- National Health Insurance (NHI) Priorities, Roadmap, and Potential PPP Opportunities
- Market access strategy development, risk analysis and scenario planning for a larger multinational pharmaceutical manufacturers.

2006 – 2013

Discovery Health (Pty) Ltd.

Designation:

1. Deputy General Manager: Risk Management

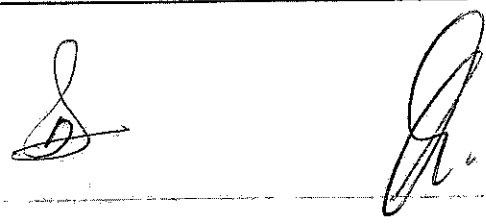
Responsibilities:

- Executing the strategic purchasing function and sustainability of all 14 medical schemes under Discovery Health's management and administration.
- Maintaining the sustainability of the medical schemes by ensuring that the claims experience for all 14 schemes under Discovery Health's administration are managed within or better than budget expectations.
- Senior line management function for a highly skilled team of 64 clinicians and analysts.
- Overall accountability for the following risk management portfolios:
 1. Low Cost and Network Plans
 2. Professional Risk Management
 3. Medical and Surgical Devices
 4. Medicines/Pharmaceuticals
 5. Disease Management & High Risk Member Management
 6. Clinical Advisory Panels and Technical Medical Liaison
 7. InHouse (Restricted) Schemes
 8. Risk Synergy Unit
- Work closely with the General Manager: Risk Management and the Discovery Health Executive Committee to formulate and drive Discovery Health's risk management strategy across all major risk streams.
- Risk Synergy Unit: Maintain an efficient, integrated and collaborative interface between the Strategy/Risk Management and Operations divisions, with respect to the conceptual development, planning, implementation and execution of all major risk management projects and initiatives.
- Product design:
 - Oversee and sign-off the Risk Management division's product design submissions.
 - Represent the Risk Management division at the product design senior management steering committee.
 - Close collaboration with the Research & Development and Actuarial teams to ensure accurate product design, financial projection and pricing considerations.
 - Support the Marketing team's external communication strategy for scheme members, employer groups, brokers and healthcare providers.
- Direct accountability to the Risk Strategy Executive Committee.

2. Executive Head: Discovery Health Medicine Division (DiscoveryMed)

Responsibilities:

- Managing and coordinating the functions of an integrated business division within Discovery Health, focused on driving Discovery Health's strategic pharmaceutical benefit design, purchasing, procurement and risk management agenda.
- Senior management oversight of a highly skilled technical team of 78 staff and managers, including clinicians, analysts and operations managers and administrators.
- Providing overall strategic direction to the following portfolios within the division:
 1. Business and Concept Development
 2. Clinical Policy and Health Economics
 3. Risk Intelligence
 4. Risk Management, including:
 - a. Managing relationships with pharmaceutical manufacturers



- b. Pharmaceutical price negotiations
- c. Clinical and billing rule intelligence
- d. Benefit and managed care tool development
- e. Regulatory affairs and liaison
- 5. Pharmacy Provider Relations, Networks and Contracting
- 6. Medicine Operations, including:
 - a. Chronic Illness Benefit, including Drug Utilization Review
 - b. Pharmaceutical Benefit Management (PBM) System
 - c. HIV & Oncology Case Management
 - d. Discovery MedXpress
- 7. Marketing and Communications
- 8. Technical Liaison with the Medical Profession
- Chair: Discovery Medicines Strategy Executive Committee.
- Direct accountability to the Risk Strategy Executive Committee.

Previous Roles:

1. Head: Risk Management – KeyCare and Network Plans (2008 – 2011).
2. Divisional Manager: Health Professional Risk Management (2007 – 2008).
3. Executive Associate to Dr. Jonathan Broomberg, Head of Strategy & Risk Management (2006 – 2007).

Key Achievements:

- **2013:**
 - Successful development and introduction of DiscoveryMed (2013), Discovery Health's integrated pharmaceutical management division, with the mandate to lead Discovery Health's pharmaceuticals strategy and ensuring execution through seamless coordination between a number of strategic and operational business units across the organization.
 - Design and development of Discovery Health's alternative (performance-based) reimbursement model for pharmacy groups, due for formal introduction in 2014.
- **2012:** Introduction of the Risk Synergy Unit tasked with ensuring an efficient, integrated and collaborative interface between the Strategy/Risk Management and Operations divisions.
- **2011:** Graduate, Discovery CEO Programme (executive development programme). A joint initiative between Discovery Health and Duke University, Durham, North Carolina, U.S.A.
- **2010:** Introduction of the KeyCare GP Profile and peer review system as management tools for Discovery Health's KeyCare GP Network, comprising over 3 300 contracted General Practitioners. The initiative is supported by the Independent Practitioners Association Foundation (IPAF) and South African Managed Care Coalition (SAMCC).
- **2009:**
 - Design, development and implementation of Discovery Health's GP-Specialist referral system, supported by a panel of 35 specialists across six clinical disciplines.
 - Discovery Star Award for Outstanding Leadership.
- **2008:** Successful development and introduction of the KeyCare Risk Management function and framework within Discovery Health.

Thought Leadership and Technical Business Writing:

Co-authored several internal strategic documents that have informed Discovery Health's position and influenced industry thinking in several focus areas, *inter alia*:

1. Surgical rebates between surgical suppliers and private hospital groups.
2. Rebased pricing for coronary stents.
3. Ethical framework for Specialist clinical governance programmes and performance-based reimbursement models.
4. GP contracting for low-cost health plans.
5. Cost impact of auto-dispensing business model by courier pharmacy groups.
6. Drivers of cost inefficiency in hospitals contracted to low cost health plans.
7. Current and projected financial impact of novel high cost medicines in South Africa.



2005 – 2006

Wits Health Consortium, Perinatal HIV Research Unit (PHRU)**Designation:** Medical Officer/Co-Investigator.**Responsibilities:**

- Report to study-specific Principal Investigator(s).
- Conducting various research studies within the unit.
- Accountability for study planning and logistics.
 - Setting realistic priorities to achieve strategic study targets.
 - Working within a multi-disciplinary team to implement and optimize research strategies.
 - Ongoing review of study protocols and standard operating procedures
 - Ensuring internal clinical, operational and administrative collaboration on new and ongoing studies.
- Responsible for research assistants and administrative support.
- Developing & maintaining good working relationships amongst project staff.
- Providing clinical support for patients enrolled in research studies and antiretroviral treatment access programs within the unit.
 - Medical Officer, HIV Wellness Clinic
 - Medical Officer, PHRU Antiretroviral Therapy Clinic
- Convenor and facilitator of doctors' clinical committee meetings and regular problem-solving meetings between junior doctors and the Executive Directors (Prof. James McIntyre & Prof. Glenda Grey).

2004 – 2007

Department of Health, Gauteng

Helen Joseph Hospital, Johannesburg.

Department of Family Medicine

Accidents & Emergencies Unit

Designation: Principal Medical Officer (Sessional)**Responsibilities:**

- Medical Out-Patients Clinic
- Triage, assessment, resuscitation and emergency treatment of emergency and critically ill patients on arrival to the Accidents and Emergencies Unit.
- Liaison with and referral of patients to the relevant clinical specialist teams within Helen Joseph Hospital and with other specialist units in the Johannesburg area.
- Tutor in Family Medicine and Emergency Medicine, to fifth and sixth year medicine students from the University of the Witwatersrand.

2004 – 2005

Dr. L. Kgobisa & Associates

Kwa-Thema Ext. 2, Springs, Gauteng.

Designation: General Practitioner.

2003 - 2004

Department of Health, Kwa-Zulu Natal

R.K. Khan Hospital, Chatsworth, Durban

Department of Internal Medicine and Coronary Care Unit

Designation: Medical Officer / Registrar

2002 – 2003

Department of Correctional Services

Modderbee Prison, Benoni.

Designation: Locum/Sessional Medical Officer.



2002 – 2003**Dr. E.V. Mkansi, General Practitioner**

Dawn Park, Boksburg, Gauteng.

Designation: Locum General Practitioner / Clinical Associate.**2003****Portsmouth NHS Trust, England**

St. Mary's Hospital, Portsmouth

Department of Dermatology

Department of Internal Medicine (and Elderly Care Unit)

Designation: Senior House Officer.**2002****Department of Health and Welfare, Limpopo**

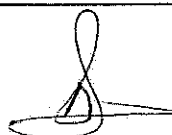
Jane Furse Memorial Hospital, Jane Furse.

Designation: Medical Officer.**2001****Department of Health and Welfare, Limpopo**

Jane Furse Memorial Hospital, Jane Furse.

Designation: Medical Officer (Community Service).**2000****Department of Health, Gauteng**

Natalspruit Hospital, Katlehong.

Designation: Medical Intern

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 56193/12

Tuesday 2 October 2012

Before the honourable Van der Merwe, DJP

In the Ex Parte Application of

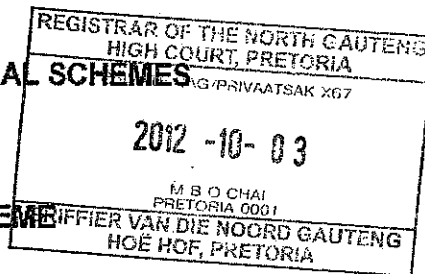
THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

MEDSHIELD MEDICAL SCHEME

Respondent



DRAFT COURT ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter:-

THE COURT ISSUES THE FOLLOWING ORDER:-

1. Condoning the applicant's non-compliance with the forms, service and time limits provided for in the rules, in terms of the provisions of Rule 6(12)(a) and directing that the matter be heard as one of urgency;
2. Condoning the failure of the applicant to serve these papers on the respondent prior to the application for the relief set out herein and directing that the application may be brought *ex parte*.
3. Granting leave that the application be carried on in camera in terms of the

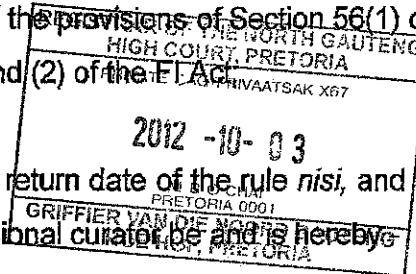
provisions of Section 16 of the Supreme Court Act 59 of 1959 and ordering the Registrar of the High Court not to place the matter for hearing on the roll for open court, before service of the application on the respondent.

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4. Placing the respondent under provisional curatorship as contemplated by the provisions of Section 56(1) of the Medical Schemes Act, No. 131 of 1998 ("the MS Act"), read together with Section 5(1) and (2) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 ("the FI Act"), pending the outcome of the return date of the rule *nisi* referred to herein;

5. Appointing Themba Benedict Langa as provisional curator ("the provisional curator") of the respondent, pending the outcome of the return date of the rule *nisi* referred to herein, in terms of the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act.

6. That pending the outcome of the return date of the rule *nisi*, and subject to the control of the applicant, the provisional curator be and is hereby



6.1 authorised to take immediate control of, and in the place of the board of trustees, manage the business and operations of and concerning the respondent, together with all assets and interests relating to the business of the respondent, in accordance with the provisions of the MS Act and the respondent's rules;

6.2 vested with all powers of control and management which would ordinarily be vested in and exercised by the board of trustees or principal officer of the respondent, whether by law or in terms of the rules of the respondent;

6.3 directed to give consideration to the best interests of the members of the respondent;

6.4 directed to exercise the powers vested in him with the view to conserving

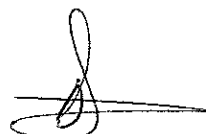
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the business of the respondent and not without the leave of the applicant to alienate or dispose of any of the property of the respondent, save to the extent and for the purposes set out hereunder;

- 6.5 directed to take control of the cash, cash investments, shares and other securities, as well as of all other assets owned, held or administered by or on behalf of the respondent;
- 6.6 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of the business and operations of the respondent, and to pay same from the assets owned, administered or held by or on behalf of the respondent;
- 6.7 authorised to pay claims or other benefits to the respondent's members, having regard to the rules of the respondent and its financial position;
- 6.8 permitted to engage such assistance of a legal, accounting, actuarial, administrative or other professional nature, as he may reasonably deem necessary for the performance of his duties in terms of this order, and to defray reasonable charges and expenses thus incurred from the assets owned, administered or held by or on behalf of the respondent;
- 6.9 authorised to institute or prosecute any legal proceedings on behalf of the respondent and to defend any action against the respondent;
- 6.10 authorised to invest such funds as are not required for the immediate purposes of the business, with an institution or financial instruments as he may regard financially sound and appropriate;
- 6.11 authorised to take control of and to operate or close existing banking accounts of the respondent whether conducted in South Africa or off-shore, and to open and operate any new banking accounts for the purposes of the curatorship;



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6.12 authorised to investigate allegations of financial and governance irregularities set out in the founding affidavit attached to this notice of motion and to recommend the appropriate action to be taken to address same and where necessary, recommend action to be taken against any person who may be guilty of misconduct or a crime;

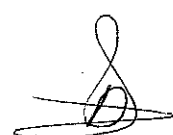
6.13 authorised, at any time during his term of office, to apply on 48 hours' notice or on an *ex parte* basis for any amendment or amplification of the powers granted to him in terms hereof in the event that it is necessary to amend or amplify such powers for the effective exercise of his powers and responsibilities; and

6.14 authorised to be entitled to reasonable remuneration and disbursements, as might be allowed by agreement with the applicant, alternatively; failing such agreement as may be determined later by this Court, and that such remuneration shall be paid by the respondent and shall be a first charge upon the respondent's assets;


7. That the disclosure of the inspection report into the affairs of the respondent and associated entities, compiled by respectively James De Villiers and Jabu Mahlangu for the applicant, be authorised as annexure to these papers in terms of the provisions of Section 10(1)(b) of the Inspection of Financial Institutions Act, No. 80 of 1998 (*"the Inspections Act"*);

8. That a rule *nisi* do issue calling upon the respondent and other interested persons to show cause, if any on Tuesday 13 November 2012 at 10:00 or so soon thereafter as Counsel may be heard, why an Order should not be made in the following terms :

8.1 Confirming the curatorship of the respondent as contemplated by the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act;





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8.2 Confirming the appointment of Themba Benedict Langa as curator (*"the curator"*) of the respondent, in terms of the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act;


8.3 Confirming the powers and mandate of the curator to be that he is –

8.3.1 authorised to take immediate control of, and in the place of the board of trustees, manage the business and operations of and concerning the respondent, together with all assets and interests relating to the business of the respondent, in accordance with the provisions of the MS Act and the respondent's rules;

8.3.2 vested with all powers of control and management which would ordinarily be vested in and exercised by the board of trustees or principal officer of the respondent, whether by law or in terms of the rules of the respondent;

8.3.3 directed to give consideration to the best interests of the members of the respondent;

8.3.4 directed to exercise the powers vested in him with the view to conserving the business of the respondent and not without the leave of the applicant to alienate or dispose of any of the property of the respondent, save to the extent and for the purposes set out hereunder;






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- 8.3.5 directed to take control of the cash, cash investments, shares and other securities, as well as of all other assets owned, held or administered by or on behalf of the respondent;
- 8.3.6 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of the business and operations of the respondent, and to pay same from the assets owned, administered or held by or on behalf of the respondent;
- 8.3.7 authorised to pay claims or other benefits to the respondent's members, having regard to the rules of the respondent and its financial position;
- 8.3.8 permitted to engage such assistance of a legal, accounting, actuarial, administrative or other professional nature, as he may reasonably deem necessary for the performance of his duties in terms of this order, and to defray reasonable charges and expenses thus incurred from the assets owned, administered or held by or on behalf of the respondent;
- 8.3.9 authorised to institute or prosecute any legal proceedings on behalf of the respondent and to defend any action against the respondent;
- 8.3.10 authorised to invest such funds as are not required for the immediate purposes of the business, with an institution or financial instruments as he may regard financially sound and appropriate;
-

[Signature]

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8.3.11 authorised to take control of and to operate or close existing banking accounts of the respondent whether conducted in South Africa or off-shore, and to open and operate any new banking accounts for the purposes of the curatorship;

8.3.12 authorised to investigate allegations of financial and governance irregularities set out in the founding affidavit attached to this notice of motion and to recommend the appropriate action to be taken to address same and where necessary, recommend action to be taken against any person who may be guilty of misconduct or a crime;

8.3.13 authorised, at any time during his term of office, to apply on 48 hours' notice or on an ex parte basis for any amendment or amplification of the powers granted to him in terms hereof in the event that it is necessary to amend or amplify such powers for the effective exercise of his powers and responsibilities; and

8.3.14 authorised to be entitled to reasonable remuneration and disbursements, as might be allowed by agreement with the applicant, alternatively; failing such agreement as may be determined later by this Court, and that such remuneration shall be paid by the respondent and shall be a first charge upon the respondent's assets;

8.4 Directing the curator to report on his curatorship to the applicant and the respondent within twelve (12) months from the date of





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this order and to include in his report a statement of his findings and recommendations concerning the respondent's affairs and the continuation, if necessary, of the curatorship;

8.5 Directing the curator to report on the respondent's affairs to the applicant on a monthly basis during the aforesaid period of twelve (12) months;

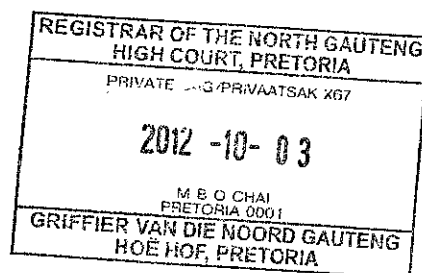
8.6 Directing the curator to take all steps which are necessary to convene a special general meeting of the respondent at which a new board of trustees who are fit and proper for this purpose shall be elected and report thereon within the twelve (12) month period referred to above;

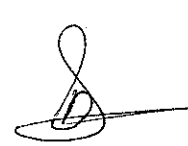
8.7 Directing that the costs of this application on the scale between attorney and own client be paid by the respondent.

9. That a copy of this Order, including the rule *nisi*, as well as the Notice of Motion herein and the Founding Affidavit together with the Annexures thereto, be served on the respondent at 288 Kent Avenue, Randburg.

BY THE COURT


REGISTRAR









"FA3.1"

CASE NO: 56193/12

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

52

PRETORIA 25 January 2013

BEFORE THE HONOURABLE MR JUSTICE PHATUDI

In the matter between:

FRANCOIS BARNARD
THABO PANDLETON MABETA
BISNATH (JAY) SINGH
GAVIN JOHN GRIFFIN
MICHAEL WRIGHT
MARK DAWSON
AMELIA HOLLAND
EBEN LOFTY VAN WYK
PETRUS JOHANNES KRIEL
FRANCOIS ALBERT PIETERSE

1ST Intervening Party
2ND Intervening Party
3RD Intervening Party
4TH Intervening Party
5TH Intervening Party
6TH Intervening Party
7TH Intervening Party
8TH Intervening Party
9TH Intervening Party
10TH Intervening Party

In re:

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

And

MEDSHIELD MEDICAL SCHEME

Respondent

HAVING HEARD counsel(s) for the parties and having read the documents filed the court reserved its judgment.

THEREAFTER ON THIS DAY THE COURT ORDERS

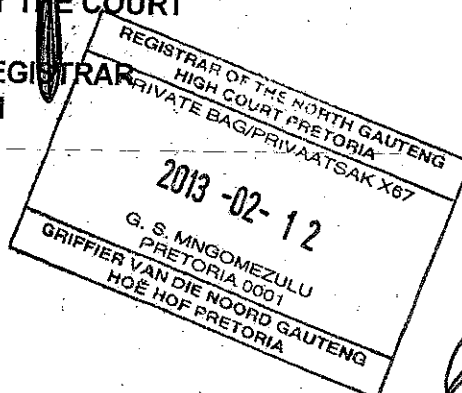
JUDGMENT

1. THAT the rule nisi issued on 2 October 2012 by this court is confirmed, and a final order is made in accordance with paragraph 8 of the notice of motion.
2. THAT the intervening parties is to pay the costs of the application jointly and severally, the one paying the others to be absolved, such costs to be on the scale as between attorney and client and to include the costs occasioned by the employment of two counsel.

BY THE COURT

REGISTRAR
AN

Att: SAVAGE, JOOSTE & ADAMS INC



"FA3.2"

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IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

56193/12

In the Ex Parte Application of

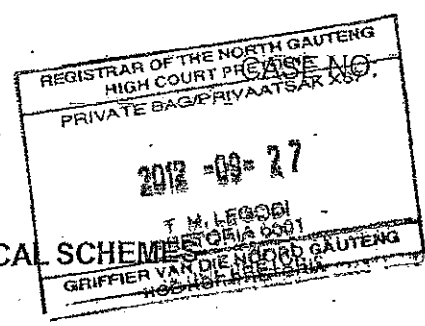
THE REGISTRAR OF MEDICAL SCHEMES

and

EDSHIELD MEDICAL SCHEME

Applicant

Respondent



NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the abovementioned applicant intends to make application to this Honourable Court at 10:00 on 2 October 2012 or so soon thereafter as Counsel may be heard for an order as follows:

1. Condoning the applicant's non-compliance with the forms, service and time limits provided for in the rules, in terms of the provisions of Rule 6(12)(a) and directing that the matter be heard as one of urgency;
2. Condoning the failure of the applicant to serve these papers on the respondent prior to the application for the relief set out herein and directing that the application may be brought *ex parte*.
3. Granting leave that the application be carried on in camera in terms of the provisions of Section 16 of the Supreme Court Act 59 of 1959 and ordering the Registrar of the High Court not to place the matter for hearing on the roll for open court, before service of the application on the respondent.
4. Placing the respondent under provisional curatorship as contemplated by the

2 54

provisions of Section 56(1) of the Medical Schemes Act, No. 131 of 1998 ("the MS Act"), read together with Section 5(1) and (2) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 ("the FI Act"), pending the outcome of the return date of the rule *nisi* referred to herein;

5. Appointing Themba Benedict Langa as provisional curator ("the provisional curator") of the respondent, pending the outcome of the return date of the rule *nisi* referred to herein, in terms of the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act;

3. That pending the outcome of the return date of the rule *nisi*; and subject to the control of the applicant, the provisional curator be and is hereby -

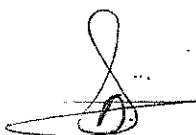
6.1 authorised to take immediate control of, and in the place of the board of trustees, manage the business and operations of and concerning the respondent, together with all assets and interests relating to the business of the respondent, in accordance with the provisions of the MS Act and the respondent's rules;

6.2 vested with all powers of control and management which would ordinarily be vested in and exercised by the board of trustees or principal officer of the respondent, whether by law or in terms of the rules of the respondent;

6.3 directed to give consideration to the best interests of the members of the respondent;

6.4 directed to exercise the powers vested in him with the view to conserving the business of the respondent and not without the leave of the applicant to alienate or dispose of any of the property of the respondent, save to the extent and for the purposes set out hereunder;

6.5 directed to take control of the cash, cash investments, shares and other



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securities, as well as of all other assets owned, held or administered by or on behalf of the respondent;

- 6.6 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of the business and operations of the respondent, and to pay same from the assets owned, administered or held by or on behalf of the respondent;
- 6.7 authorised to pay claims or other benefits to the respondent's members, having regard to the rules of the respondent and its financial position;
- 6.8 permitted to engage such assistance of a legal, accounting, actuarial, administrative or other professional nature, as he may reasonably deem necessary for the performance of his duties in terms of this order, and to defray reasonable charges and expenses thus incurred from the assets owned, administered or held by or on behalf of the respondent;
- 6.9 authorised to institute or prosecute any legal proceedings on behalf of the respondent and to defend any action against the respondent;
- 6.10 authorised to invest such funds as are not required for the immediate purposes of the business, with an institution or financial instruments as he may regard financially sound and appropriate;
- 6.11 authorised to take control of and to operate or close existing banking accounts of the respondent whether conducted in South Africa or off-shore, and to open and operate any new banking accounts for the purposes of the curatorship;
- 6.12 authorised to investigate allegations of financial and governance irregularities set out in the founding affidavit attached to this notice of motion and to recommend the appropriate action to be taken to address same and where necessary, recommend action to be taken against any



person who may be guilty of misconduct or a crime;

6.13 authorised, at any time during his term of office, to apply on 48 hours' notice or on an *ex parte* basis for any amendment or amplification of the powers granted to him in terms hereof in the event that it is necessary to amend or amplify such powers for the effective exercise of his powers and responsibilities; and

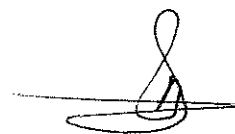
6.14. authorised to be entitled to reasonable remuneration and disbursements, as might be allowed by agreement with the applicant, alternatively; failing such agreement as may be determined later by this Court, and that such remuneration shall be paid by the respondent and shall be a first charge upon the respondent's assets;

7. That the disclosure of the inspection reports into the affairs of the respondent and associated entities, compiled by respectively James De Villiers and Jabu Mahlangu for the applicant, be authorised as annexure to these papers in terms of the provisions of Section 10(1)(b) of the Inspection of Financial Institutions Act, No. 80 of 1998 (*"the Inspections Act"*);

8. That a rule *nisi* do issue calling upon the respondent and other interested persons to show cause, if any on Tuesday 13 November 2012 at 10:00 or so soon thereafter as Counsel may be heard, why an Order should not be made in the following terms:

8.1 Confirming the curatorship of the respondent as contemplated by the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act;

8.2 Confirming the appointment of Themba Benedict Langa as curator (*"the curator"*) of the respondent, in terms of the provisions of Section 56(1) of the MS Act, read together with Section 5(1) and (2) of the FI Act;



8.3 Confirming the powers and mandate of the curator to be that he is—

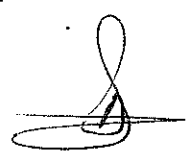
8.3.1 authorised to take immediate control of, and in the place of the board of trustees, manage the business and operations of and concerning the respondent, together with all assets and interests relating to the business of the respondent, in accordance with the provisions of the MS Act and the respondent's rules;

8.3.2 vested with all powers of control and management which would ordinarily be vested in and exercised by the board of trustees or principal officer of the respondent, whether by law or in terms of the rules of the respondent;

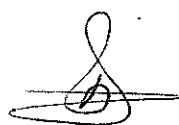
8.3.3 directed to give consideration to the best interests of the members of the respondent;

8.3.4 directed to exercise the powers vested in him with the view to conserving the business of the respondent and not without the leave of the applicant to alienate or dispose of any of the property of the respondent, save to the extent and for the purposes set out hereunder;

8.3.5 directed to take control of the cash, cash investments, shares and other securities, as well as of all other assets owned, held or administered by or on behalf of the respondent;




- 8.3.6 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of the business and operations of the respondent, and to pay same from the assets owned, administered or held by or on behalf of the respondent;
- 8.3.7 authorised to pay claims or other benefits to the respondent's members, having regard to the rules of the respondent and its financial position;
- 8.3.8 permitted to engage such assistance of a legal, accounting, actuarial, administrative or other professional nature, as he may reasonably deem necessary for the performance of his duties in terms of this order, and to defray reasonable charges and expenses thus incurred from the assets owned, administered or held by or on behalf of the respondent;
- 8.3.9 authorised to institute or prosecute any legal proceedings on behalf of the respondent and to defend any action against the respondent;
- 8.3.10 authorised to invest such funds as are not required for the immediate purposes of the business, with an institution or financial instruments as he may regard financially sound and appropriate;
- 8.3.11 authorised to take control of and to operate or close existing banking accounts of the respondent whether conducted in South Africa or off-shore, and to open and operate any new banking accounts




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for the purposes of the curatorship;

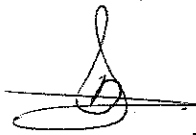

8.3.12 authorised to investigate allegations of financial and governance irregularities set out in the founding affidavit attached to this notice of motion and to recommend the appropriate action to be taken to address same and where necessary, recommend action to be taken against any person who may be guilty of misconduct or a crime;

8.3.13 authorised, at any time during his term of office, to apply on 48 hours' notice or on an ex parte basis for any amendment or amplification of the powers granted to him in terms hereof in the event that it is necessary to amend or amplify such powers for the effective exercise of his powers and responsibilities; and

8.3.14 authorised to be entitled to reasonable remuneration and disbursements, as might be allowed by agreement with the applicant, alternatively; failing such agreement as may be determined later by this Court, and that such remuneration shall be paid by the respondent and shall be a first charge upon the respondent's assets;

8.4 Directing the curator to report on his curatorship to the applicant and the respondent within twelve (12) months from the date of this order and to include in his report a statement of his findings and recommendations concerning the respondent's affairs and the continuation, if necessary, of the curatorship;

8.5 Directing the curator to report on the respondent's affairs to the

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applicant on a monthly basis during the aforesaid period of twelve (12) months;

8.6 Directing the curator to take all steps which are necessary to convene a special general meeting of the respondent at which a new board of trustees who are fit and proper for this purpose shall be elected and report thereon within the twelve (12) month period referred to above;

8.7 Directing that the costs of this application on the scale between attorney and own client be paid by the respondent.

9. That a copy of this Order, including the rule *nisi*, as well as the Notice of Motion herein and the Founding Affidavit together with the Annexures thereto, be served on the respondent at 288 Kent Avenue, Randburg.

10. Granting the applicant such further and/or alternative relief as the above Honourable Court may deem fit.

TAKE NOTICE THAT the Affidavit of **MONWABISI SABATHA MACDONALD GANTSHO**, with the annexures thereto will be used in support of this Application.

TAKE FURTHER NOTICE THAT the Applicant has appointed the offices of the undersigned, at which address he will accept notice and service of all process and documents in these proceedings.

BE PLEASED TO TAKE FURTHER NOTE that upon the application of the respondent the above Honourable Court may anticipate the return day if not less than 48 hours written notice of such application has been furnished to the applicant and the Registrar of the High Court.

BE PLEASED TO TAKE FURTHER NOTE that if you intend opposing the relief



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sought on the return date of the rule *nisi*, you are required to:

- (a) notify the applicant's attorney in writing by 16h00 on Monday 8 October 2012;
and
- (b) file your Answering Affidavit, if any, by 16h00 on Monday 22 October 2012;
- (c) in your Notice of Opposition appoint an address referred to in Rule 6(5)(b) at which you will receive notices and service of all documents in these proceedings.

Kindly enrol the matter for hearing accordingly.

DATED AT PRETORIA ON THIS 27th DAY OF SEPTEMBER 2012.



SAVAGE, JOOSTE & ADAMS INC
ATTORNEYS FOR APPLICANT
141 Boshoff Street
corner Melk Street
Nieuw Muckleneuk
PRETORIA
PO Box 745
PRETORIA
0001
E-MAIL: janet@savage.co.za
TEL: (012) 452 8200
FAX: (012) 452 8230
REF: M VAN STADEN/C623

TO :

THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA

(2120w))



"FA 4", 62

IN THE NORTH GAUTENG HIGH COURT
OF SOUTH AFRICA
PRETORIA

CASE NO: 56193/12

In the matter between:

FRANCOIS BARNARD
THABO PANDLETON MABETA
BISNATH (JAY) SINGH
GAVIN JOHN GRIFFIN
MICHAEL WRIGHT
MARK DAWSON
AMELIA HOLLAND
EBEN LOFTY VAN WYK
PETRUS JOHANNES KRIEL
FRANCOIS ALBERT PIETERSE

1st Intervening Party
2nd Intervening Party
3rd Intervening Party
4th Intervening Party
5th Intervening Party
6th Intervening Party
7th Intervening Party
8th Intervening Party
9th Intervening Party
10th Intervening Party

In re:

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO.
05/07/2013	
DATE	SIGNATURE

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

MEDSHIELD MEDICAL SCHEME

Respondent

JUDGMENT IN THE APPLICATION FOR LEAVE TO APPEAL

MURPHY J

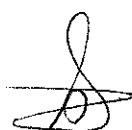
1. The applicants (the intervening parties in the main application) apply for leave to
----- appeal against my judgment of 25 January 2013 confirming the rule nisi issued -----



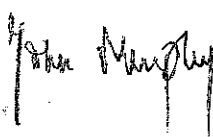


by van der Merwe JP on 2 October 2012 and appointing a curator to manage the affairs of the medical scheme.

2. The application for leave to appeal sets out a plethora of grounds upon which leave is sought, many of which misstate or misrepresent my findings and raise issues not argued before me.
3. I am of the opinion that leave to appeal should be granted for the simple reason that there is a reasonable prospect that another court may come to a different conclusion with regard to my finding that good cause exists for the appointment of a curator. Accordingly, no purpose will be served in analysing and commenting upon the various grounds misstating my findings or raising new issues.
4. The importance of the matter to all parties and the novelty of the issues related to the jurisdictional preconditions justify granting leave to the Supreme Court of Appeal.
5. The effect of granting leave is that my order confirming the rule nisi and appointing the curator will be suspended. The respondent (the applicant in the main application) did not bring a formal application in terms of rule 49(11) for the order to remain effective. However, counsel for the parties indicated from the bar their agreement that in the event of leave to appeal being granted the order granting a provisional curator and the rule nisi issued by van der Merwe DJP should be revived and remain effective until the appeal is finalised.
7. Accordingly, the following orders are issued:
 - i) The applicants are granted leave to appeal to the Supreme Court of Appeal

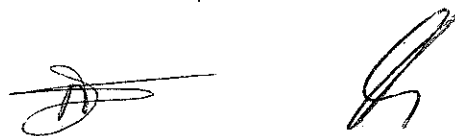


- ii) The orders of van der Merwe DJP are revived and extended pending the outcome of the appeal in respect of whether a final order of curatorship should be granted.
- iii) The costs of the application for leave to appeal shall be costs in the appeal.



**JR MURPHY
JUDGE OF THE NORTH GAUTENG
HIGH COURT**

Date Heard:	30 May 2013
For the Applicant:	Adv M.C. Maritz SC
Instructed By:	Savage, Jooste & Adams Attorneys
For the Respondent:	Adv J.H. Dreyer SC
Instructed By:	Geyser Van Rooyen Attorneys





MEDSHIELD
your kind of care

"FAS"
65

THE REGISTRAR OF MEDICAL SCHEMES
BLOCK E, HADEFIELD OFFICE PARK
1267 PRETORIUS STREET
HATFIELD, PRETORIA

FOR ATTENTION: MR STEPHEN MMATLI

**PROVISIONAL CURATOR'S REPORT TO THE REGISTRAR OF
MEDICAL SCHEMES IN RELATION TO THE AFFAIRS OF
MEDSHIELD MEDICAL SCHEME**

PREPARED BY:

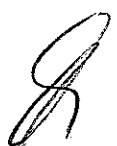
THEMBA LANGA

(PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME)

DATE: NOVEMBER 2013

TABLE OF CONTENTS

1. INTRODUCTION	1
2. SERVICE PROVIDER AGREEMENTS	1
3. MSO LITIGATION	1
4. MEDSHIELD TRADEMARK	2
5. MEDSHIELD CORPORATE IDENTITY	2
6. YARONA LITIGATION	2
7. ONE CARE INDEBTEDNESS	2
8. CONCLUDING REMARKS	3



REPORT BY THE PROVISIONAL CURATOR OF MEDSHIELD MEDICAL SCHEME TO THE REGISTRAR OF MEDICAL SCHEMES ON THE AFFAIRS OF MEDSHIELD

1. INTRODUCTION

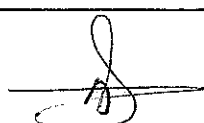
- 1.1 With regard to the said report, I confirm that I am preparing this report on CMS's insistence that I prepare and submit a report, even though I do not at this stage have the draft management accounts to report on, and my last report was submitted on 30 September 2013 and a letter with the latest management accounts was submitted on 23 October 2013.
- 1.2 I confirm that once the management accounts become available, I will submit same to you together with any other relevant documents.

2. SERVICE PROVIDER AGREEMENT

- 2.1 The RFP process have been finalised and service providers have been selected, meeting have been held to negotiate contracts and contract prices and I am currently reviewing all agreements to be signed this week for implementation next year.
- 2.2 Agreement are being entered into with the following service providers:
- 2.2.1 Helios
- 2.2.2 PPN
- 2.2.3 Wellness Odyssey
- 2.2.4 Medscheme
- 2.2.5 Optipharm

3. MSO LITIGATION

- 3.1 MSO issued summons as they alleged that their contract was unlawfully terminated, a notice of intention to oppose and the relevant affidavits were served and filed.
- 3.2 In an attempt to avoid the matter dragging on and affecting the business of Medshield, settlement negotiations are being entered into. Once the terms of the settlement have been finalised, I will report on same.



4. MEDSHIELD TRADEMARK

4.1 Medshield entered into a Deed of Assignment with Alumni Trading 264 (Pty) Ltd for the purchase of the trademark "Medshield".

4.2 The work mark "Medshield" has been registered and entered in the Register of Trade Marks as follows:

4.2.1 2010/0052 in class 35 (advertising, business management, business administration, office functions, offering for sale and the sale of goods in retail and wholesale trade);

4.2.2 2010/00523 in class 36 (insurance, financial affairs, monetary affairs, real estate affairs);

4.2.3 2010/00524 in class 41 (education providing of training, entertainment, sporting and cultural activities.

4.3 The trade marks were granted on 13 October 2011 and have been registered for a period of ten years.

5. MEDSHIELD CORPORATE IMAGE

The new corporate identity of Medshield was launched on 2 October 2013.

6. YARONA LITIGATION

6.1 A successful application was brought for separation of the issues.

6.2 The court ordered Yarona to first prove that they have a valid agreement with Medshield before litigation on other issues can continue.

7. ONE CARE

Medshield has received the final payment of R2.6 million from One Care in respect of the recovery of their indebtedness pursuant to an arbitration award. This matter has now been finalised.

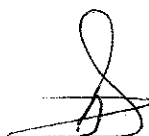
8. CONCLUDING REMARKS

- 8.1 I trust that you will find the above in order.
- 8.2 I will discuss the contents of this report or any other relevant issue in detail with you during our monthly meeting at CMS' offices.

SIGNED at **JOHANNESBURG** on this the 4th day of **NOVEMBER 2013**



THEMBA LANGA
PROVISIONAL CURATOR
MEDSHIELD MEDICAL SCHEME



"FAB.1"

71 76

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

MEDSHIELD MEDICAL SCHEME

First Respondent

TB LANGA N.O.

Second Respondent

CONFIRMATORY AFFIDAVIT

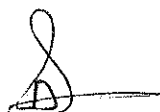
I, the undersigned

STEPHEN MMATLI

do hereby make oath and state:

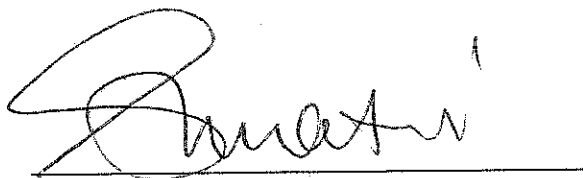
1 I am a major male and the Head: Compliance and Investigations of the Council for Medical Schemes (*"the council"*) of business address Block A, Eco Glades 2 Office Park, 420 Witch - Hazel Avenue, Eco Park, Centurion, Pretoria.

2 Unless it appears from the context, the facts herein contained are within my own knowledge and belief and are true and correct.



 SM

3 I have perused the contents of the founding affidavit in this application
deposed to by Monwabisi Sabatha Macdonald Gantsho, the Registrar of
Medical Schemes. I confirm the contents thereof insofar as it pertains to me.

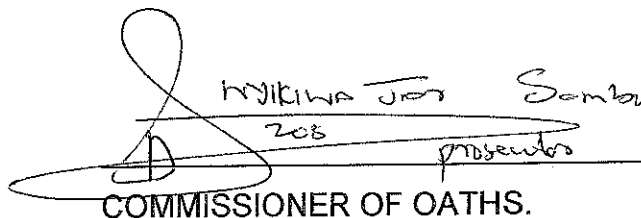
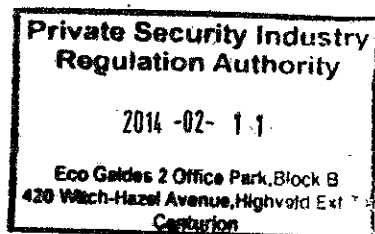


DEPONENT

THUS DONE AND AFFIRMED TO AT PRETORIA ON THIS 11th DAY OF February
2014 BY THE DEPONENT WHO ACKNOWLEDGES -

1. THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT;
2. THAT IT IS TO THE BEST OF HIS KNOWLEDGE TRUE AND CORRECT;
3. THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH
AND
4. THAT HE CONSIDERS THE OATH TO BE BINDING ON HIS CONSCIENCE.

Before me,



MONWABISI SABATHA GANTSHO
2014
prosecutor

COMMISSIONER OF OATHS.

PSIR
420 WYCH-HAZEL AVENUE
HIGHVELD EXT
CENTURION



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

THE REGISTRAR OF MEDICAL SCHEMES

Applicant

and

MEDSHIELD MEDICAL SCHEME

First

Respondent

TB LANGA N.O.

Second

Respondent

CONFIRMATORY AFFIDAVIT

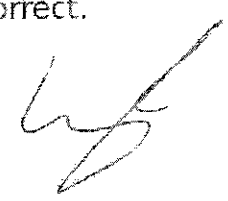
I, the undersigned

WILLEM JACO LUBBE

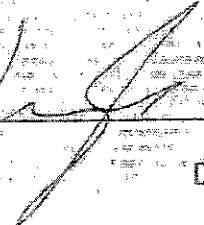
do hereby make oath and state:

1. I am a senior investigator of the Compliance and Investigations Unit of the Council for Medical Schemes ("the council") of business address Block A, Eco Glades 2 Office Park, 420 Witch - Hazel Avenue, Eco Park, Centurion, Pretoria.

2. Unless it appears from the context, the facts herein contained are within my own knowledge and belief and are true and correct.



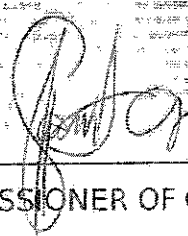
3 I have perused the contents of the founding affidavit in this application deposed to by Monwabisi Sabatha Macdonald Gantscho, the Registrar of Medical Schemes. I confirm the contents thereof insofar as it pertains to me.

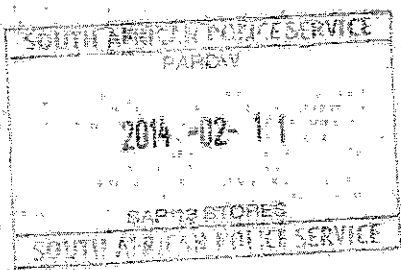

DEPONENT

THUS DONE AND AFFIRMED TO AT PRETORIA ON THIS DAY OF 2014 BY THE DEPONENT WHO ACKNOWLEDGES -

1. THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT;
2. THAT IT IS TO THE BEST OF HIS KNOWLEDGE TRUE AND CORRECT;
3. THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND
4. THAT HE CONSIDERS THE OATH TO BE BINDING ON HIS CONSCIENCE.

Before me:


70931629
On Affidavit
COMMISSIONER OF OATHS.





"FA7"

74

Ref: Medshield Medical Scheme Curatorship 2012
Enq: Stephen Mmatli
t: 012 431 0578
f: 012 431 0678
e: s.mmatli@medicalschemes.com
Date: 8 November 2013

Mr Themba Langa
Curator
Medshield Medical Scheme

Dear Sir

MEDSHIELD MONTHLY MEETING WITH CURATOR

1. The meeting on 6 November 2013 between yourself and officials from this Office relating to your monthly reports refers. Further to the meeting this letter serves to confirm the issues requiring your further response as identified during the said meeting:
2. **Medshield trademark:** With reference to point 4 of your report dated 4 November 2013 dealing with the Medshield trademark the following: This Office expressed its difficulties with the scheme buying this trademark, registered in 2011, for an amount of R10 million under circumstance where it appears that the scheme, at the very least, owns the common law rights to the Medshield trade mark. I confirm your advice that the purchase has not yet been concluded and that you will obtain an expert legal opinion on the trade mark rights vesting in the scheme in its name by virtue of it having prior use of the trade mark and that you will request our approval before making any commitment in this regard.
3. **Legal matters and recoveries:** You undertook to furnish this Office with a detailed update on all legal matters, especially legal matters relating to action taken based on the irregularities identified in the inspection reports leading up to the curatorship.
4. **New contracts entered into:** Please furnish this Office with all the new contracts entered into by yourself as curator since the inception of the curatorship.

Chairperson: Prof. Y Veriava Chief Executive & Registrar: Dr M Gantsho
Block A Eco Glades 2 Office Park, 420 Witch-Hazel Street, Ecopark, Centurion 0157
Tel: 012 431 0500 Fax: 012 430 7644 Customer Care: 0861 123 267
Information@medicalschemes.com www.medicallchemes.com

A handwritten signature in dark ink, appearing to be a stylized 'A' or similar character, located in the bottom right corner of the page.

5. **Elections:** As discussed during the meeting please provide us with an updated project plan with the same timelines but one that would include the details of the electoral officer and amounts etc.
6. **Investments:** Regarding the investment managers it is confirmed that you were referred to Section 35 and Annexure B read together with Regulation 30 which deals with the requirements in this regard.
7. **Annual Financial Statements:** Regarding the possible extra costs for the external auditors involved in the finalisation of the annual financial statements before end of March for you to sign such off before you exit the scheme, it is confirmed that you will liaise and engage at a very early stage with the external auditors and Audit Committee to ensure the timeous finalisation of the audit. As per information submitted during the auditor approval process by the engagement partner, Mr J Grove, the audit plan follows the following broad timelines:
 - o Planning and initial scoping activities are performed during August and September, following which the audit plans are submitted to the audit committee of the scheme for approval.
 - o The fieldwork, all completion activities, issuing management reports and the audit on statutory returns is undertaken between January and April.

Therefore, kindly engage with the auditors and obtain a revised audit plan that will ensure that the timelines as set out above are met.

8. **Administration of the scheme:** It was further agreed that you will provide us with specific details relating to the contracts with Helios and Medscheme relating to the administration platform used by the scheme as the basis for the scheme's self-administration.
9. **Prescribed Minimum Benefits:** With reference to the document attached to your September 2013 report marked "Review of the PMB provisioning by Medshield" the following queries were raised for your response:
 - (a) Page Page 1, par 1(g): Definitions in the Rules that has a relationship with PMB's - Does the term "Medshield Health Rate" also refer to the DH Rate? Are the words used interchangeably or is the reference to DH Rate (Discovery Health Rate) a typographical error?
 - (b) Page 2, par 2(a) : The proposed rules refer to a transfer of a patient to a Network hospital after the patient is stabilised in a Non-Network hospital. When asked who should facilitate the transfer, you advised that the Scheme will facilitate the transfer. Please confirm this.

76
(c) Page 3, par 9.1: Chronic Disease List (CDL) Out-of-Hospital - The proposed rules refer to the re-imbursement of Specialists participating in the Medshield Network or all Specialists who have agreed to charge the Premier Rate, however the Premier Rate is not defined. The Scheme has defined the rates such as Medshield Medical Aid Rate and Medshield Health Rate except the Premier Rate and we would like to be furnished with the definition of the Premier Rate.

Para 9.1: Reimbursement Rate if the beneficiary voluntarily does not use the DSP - The co-payment which the member is liable for is indicated as equal to 40% of the Scheme rate....., and the Scheme's portion is indicated to be up to a maximum of 80% of the Medshield Rate. We asked what the 40% based on and/or whether the Scheme erred as 40% is indicated instead of 20% or should it be 60% instead of 80%?

(d) Page 4, par 2: CDL Diagnosis and Page 5, par 7: DTPMB – Diagnosis. The proposed rules stipulate that "Healthcare treatment subject to the member making application to the Scheme for CDL cover will be payable in full". We requested to be advised on how funding would be made by the Scheme in the event of failure to apply for CDL and/or DT PMBs? Furthermore -

1. This rule fails to take into account that in the event of an emergency medical condition, it may be impractical for a beneficiary to make an application for the CDL and DT PMB cover. Therefore, we are of the view that the Scheme must not deny members benefits for CDL and DT PMB cover owing to registration with the Scheme;
2. Where there is no application made to the Scheme for CDL and DT PMB cover, the payment of the claims must not be made from the members' medical savings account;
3. In the event of failure by beneficiaries to apply for cover for both CDL and DT PMB cover, we hold the view that the Scheme must capture all submitted ICD10 codes on its systems as this may trigger the identification of a PMB condition by the Scheme and payment of the said claims must be made in accordance with the PMB regulation;
4. The Scheme must inform the members and service providers of the application/registration process; however this application must not place an unnecessary burden on members;
5. The outcome of the application process must be communicated to members.

(e) Page 4 par 3 and page 6 par 9: CDL Medicine and DT PMB Medicine - The proposed rule stipulate that co-payment may be imposed and payment made up to a maximum of 60% of the Scheme Medication Rate as well as payment up to the maximum of chronic drug amount... subject to Scheme's Medication Rate. Is the Scheme's Medication Rate or Chronic drug amount based on Single Exit Price?

77

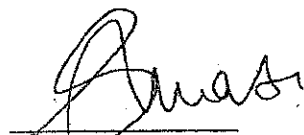
(f) Page 7, para 13 DT PMB – Mental Illness. We have noted that the state hospitals (including those with psychiatric ward) and any SANCA facilities contracted to the Scheme to provide treatment for mental illness and we enquired whether the Scheme has indeed entered into contracts with the state facilities. We also enquired whether the contract was entered with the state facilities in all the provinces or not. You responded in the affirmative and advised that the contracts concluded were for all the provinces

(g) Page 8 and 9: Oncology, Pathology and Radiology - The proposed rules provide that State facilities contracted with the Scheme to render services to beneficiaries. You advised that you have entered into contracts with state facilities in all provinces for such services to be rendered to beneficiaries of Medshield medical scheme. You undertook to furnish us with copies of the said contracts.

(h) Page 10, par 4: Notes - The rules provide that "the beneficiaries must authorize all voluntary DT PMB hospital admissions....." (my emphasis). This proposed rule does not take into account that in some instances it may be impractical for beneficiaries to authorize hospital admissions themselves and they may elect to be assisted by either family members or service providers to obtain authorization for hospital admission.

10. We await your detailed response at your earliest convenience.

Yours sincerely



STEPHEN MMATLI
HEAD: COMPLIANCE & INVESTIGATIONS
COUNCIL FOR MEDICAL SCHEMES



MEDSHIELD

your kind of care

"FA8"

78

THE REGISTRAR OF MEDICAL SCHEMES
BLOCK E, HADEFIELD OFFICE PARK
1267 PRETORIUS STREET
HATFIELD, PRETORIA

FOR ATTENTION: MR STEPHEN MMATLI

**PROVISIONAL CURATOR'S REPORT TO THE REGISTRAR OF
MEDICAL SCHEMES IN RELATION TO THE AFFAIRS OF
MEDSHIELD MEDICAL SCHEME**

PREPARED BY:

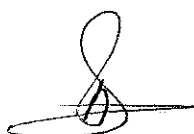
THEMBA LANGA

(PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME)

DATE: 25 NOVEMBER 2013

TABLE OF CONTENTS

1. MEDSHIELD TRADEMARK	ERROR! BOOKMARK NOT DEFINED.
2. LEGAL MATTERS AND RECOVERIES	1
3. NEW CONTRACTS ENTERED INTO	1
4. ELECTIONS	3
5. INVESTMENTS	3
6. ANNUAL FINANCIAL STATEMENTS	3
7. ADMINISTRATION OF THE SCHEME	3
8. PMB'S	4
9. CONCLUDING REMARKS	5



REPORT BY THE PROVISIONAL CURATOR OF MEDSHIELD MEDICAL SCHEME TO THE REGISTRAR OF MEDICAL SCHEMES ON THE AFFAIRS OF MEDSHIELD

1. MEDSHIELD TRADEMARK

With regards to the abovementioned matter, we confirm that we are in the process of obtaining an expert legal opinion with regards to the use of the Medshield trademark and will provide same to you on receipt thereof.

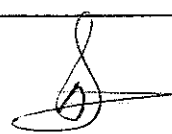
2. LEGAL MATTERS AND RECOVERIES

With regards to the abovementioned matter, we attach hereto a update report of all the legal matters and recoveries from Diale Mogashoa Attorneys as Annexure "A".

3. NEW CONTRACTS ENTERED INTO

3.1 With regards to the new contracts entered into, please find herewith a list with breakdown as to the service providers, provisions of service, start date, end date and cost of the contract.

Service Provider	Service Provision	Start Date	End Date	Cost
Wellness Odyssey	Wellness Day Management	1 January 2014	31 December 2014	Fee for service
Preferred Provider Negotiators	Optometry Management	1 January 2014	31 December 2015	Fee for service
Nissi Networks	Loyalty Programme	1 October 2013	31 October 2018	R75 per participating member per month
Helios IT Solutions	Administration Platform	1 January 2014	31 December 2014	R16.49 pmpm plus VAT
Ntsumi Telecommunications	Sending of 80 000 MMS' pm	1 October 2013	30 September 2018	R240 000 per month plus VAT
Medscheme	Pharmacy Benefit Management	1 January 2014	31 December 2014	R11.91 pmpm plus VAT
Medscheme	Pharmacy Network Management	1 January 2014	31 December 2014	R0.62 pmpm plus VAT




81

Medical Services Organisation (Settlement and extension of contract)	Hospital Benefit Management	1 December 2013	1 December 2014	R22.96 pmpm incl VAT
Optipharm	Courier Pharmacy	1 January 2014	31 December 2015	Fee for service
Alumni Trading 264 (Pty) Ltd	Assignment of Intellectual Property in the name "Medshield"	Effective 15 November 2013		R10 000 000.00 plus VAT
EOH Health	Broker contact centre	1 March 2013	28 February 2015	R75 000 per month plus VAT
EOH Health	Website maintenance and development	1 March 2013	28 February 2015	R17 920 per month plus VAT
Clinix Health Group	Hospital DSP	1 January 2013	31 December 2015	Fee for service
Independent Clinical Oncology Network	Oncology network and benefit management	1 January 2013	31 December 2013	R0.30 pmpm plus VAT
Life Healthcare	Hospital DSP	1 January 2013	31 December 2015	Fee for service
National Health Network	Hospital DSP	1 January 2013	31 December 2015	Fee for service
Netcare Hospitals	Hospital DSP	1 January 2013	31 December 2013	Fee for service
Verirad	Radiology and Pathology claim monitoring	1 October 2012	30 September 2014	R1.50 pmpm plus VAT
PriceWaterhouseCoopers	External Audit	2013 Financial year		Fee for service
SizweNtsabulaGobodo	Internal Audit	2013 Financial year	2015 Financial year	Fee for service
Pino Mavengere	Consulting Services			
Tumi Seane	Consulting Services			
Jacky Mathekga	Consulting Services			
Nihlent x 2	Tender Adjudication			




Mohau Capital	Consulting Services			
NMG Consultants	Consulting Services			

3.2 We confirm that we will attach soft copies of all the agreements hereto as Annexure "B".

4. ELECTIONS

4.1 With regards to the elections, I am still in the process of obtaining quotations as the quotations that were received are extremely high and we are trying to find a cheaper option and will provide you with an updated projects plan with the same timelines which would also include the details of the electoral offices and amounts.

5. INVESTMENTS

Edward Khumalo, Medshield CFO is currently in the process of attending presentations of investment managers and upon conclusion of same we will provide you with a report.


6. ANNUAL FINANCIAL STATEMENTS

6.1 With regards to the possible extra costs for the external auditors involved in the finalisation of the annual financial statement to be signed off by end of March before I exit the Scheme, it is confirmed that this extra cost would amount to approximately R20 000 (twenty thousand rand), which is a saving of R31 000 (thirty one thousand rand)

6.2 I confirm that Mr J Grove is currently updating the revised audit plan in order to ensure that the timelines as set out are met and we will provide you with same on receipt thereof.

7. ADMINISTRATION OF SCHEME

The Helios and Medscheme contracts entered into are for a period of one (1) year only and the agreements are attached under clause 4 of this report.




8. PMB'S

8.1 With regards to the queries in respect of the PMB's, please see response below:

9. Prescribed Minimum Benefits

(a) The DH Rate (Discovery Health Rate) is a typographical error. The correct term is Medshield Scheme Rate.

(b) Medshield Medical Scheme with the assistance of its Managed Care Provider MSO will facilitate the transfer of our member to a Network Hospital. The Scheme takes full responsibility for the arrangement of such a transfer.


(c) Page 3, Paragraph 9.1. The term "Premier Rate" is an error and the scheme defines the rate as the Medshield Scheme Rate. The Medshield Scheme Rate is the 2013 Scheme Tariff plus 6%. This excludes any negotiated rate.

Re-imburement Rate-If a member voluntarily uses a DSP the member will be liable for 40% of the Medshield Scheme Rate. The Schemes liability is equal to 60%.

(d) Point 1: We agree that in the event of an emergency, the member may not be able to make an application for the CDL and DTPMB cover and we will make sure that members are not denied cover. The Diagnosis of a CDL or DTPMB condition may occur either in or out of hospital and sometimes start out as an emergency. If this occurs as an emergency the member will be given access to emergency medical treatment and this will be paid accordingly. If a member has applied for treatment for a CDL or DTPMB condition the PMB entitlement (care plan- a minimum basket of services for the condition) will be automatically triggered in the schemes administration system to make payment. The Medshield Scheme rules does take into account that a member may experience an emergency medical condition and makes provision for this occurrence and this is contained in Annexure D-4.5; 7.7 ; 7.11.3 ;7.11.4.

Points 2 and 3 are noted by the scheme and systems and processes are being configured to ensure compliance thereof. We estimate that this configuration will take a number of 6-7 months and should be ready for implementation by June 2014.

Point 4: Agreed.



84

Point 5: We have been communicating the outcome of the application process not only to members but also to the healthcare providers or the treating doctor. We keep on making improvements on our communication approach so as to improve the member experience.

(e) The Schemes medication rate is based on a maximum Generic Price which is known as the Reference price in line with single exit price. Medicine Formularies do apply.

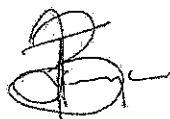
(f) and (g) Medshield Medical Scheme is in the process of formalising contracts with state facilities. In case there is a need for a draft copy, we will be happy to share with you. Given some level of contracting experience built within state hospitals, we hope to conclude these discussions by July 2014.

(h) Medshield Preauthorisation process does take into consideration that members and their beneficiaries may not at all times be able to call for an authorisation, especially in emergency situations and to this end family members and hospital personnel are allowed to call on the beneficiaries behalf and seek authorization.

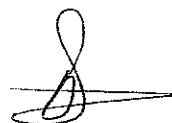
9. CONCLUDING REMARKS

- 9.1 I trust that you will find the above in order.
- 9.2 I confirm that I reserve the right to augment and/or clarify any matters upon receipt of further information and/or documentation.
- 9.3 I will discuss the contents of this report or any other relevant issue in detail with you during our monthly meeting at CMS' offices.

SIGNED at JOHANNESBURG on this the 25th day of NOVEMBER 2013



THEMBA LANGA
PROVISIONAL CURATOR
MEDSHIELD MEDICAL SCHEME





MEDSHIELD

your kind of care

"FA9" 85

THE REGISTRAR OF MEDICAL SCHEMES
BLOCK E, HADEFIELD OFFICE PARK
1267 PRETORIUS STREET
HATFIELD, PRETORIA

FOR ATTENTION: MR STEPHEN MMATLI

**PROVISIONAL CURATOR'S REPORT TO THE REGISTRAR OF
MEDICAL SCHEMES IN RELATION TO THE AFFAIRS OF
MEDSHIELD MEDICAL SCHEME**

PREPARED BY:

THEMBA LANGA

(PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME)

DATE: 12 DECEMBER 2013

TABLE OF CONTENTS

1. MANAGEMENT ACCOUNTS	1
2. MEDSHIELD TRADEMARK	1
3. ELECTIONS	2
4. INVESTMENTS	2
5. ANNUAL FINANCIAL STATEMENTS	2
6. LITIGATION MATTERS	2
7. CONCLUDING REMARKS	3



87

REPORT BY THE PROVISIONAL CURATOR OF MEDSHIELD MEDICAL SCHEME TO THE REGISTRAR OF MEDICAL SCHEMES ON THE AFFAIRS OF MEDSHIELD

1. MANAGEMENT ACCOUNTS

1.1 With reference to the abovementioned matter, herewith the October management account figures together with the Management Accounts attached hereto as Annexure "A".

BALANCE SHEET			
ACCUMULATED FUNDS RATIO			
The accumulated funds ratio is calculated on the following basis:			
Total members' funds per balance sheet		1 464 095 412	
Less: Available-for-sale investment reserve		(194 636 945)	
Accumulated funds per Regulation 29		1 269 458 466	
	Gross Contributions (Incl Savings)		Net Contributions (Excl Savings)
Annualised contributions	2 572 761 345		2 465 427 503
Accumulated funds ratio	49.34%		51.49%
AVAILABLE-FOR-SALE RESERVES			
	Unrealised Gains	Unrealised Losses	Net Position for the period
Sanlam	78 879 351	(3 356 968)	75 522 383
Prudential Portfolio Managers	64 540 044	(6 309 607)	58 230 437
Taquanta Asset Managers	26 770 528	0	26 770 528
Allan Gray Life Ltd	49 217 472	(15 103 874)	34 113 598
	219 407 395	(24 770 449)	194 636 945
Average net contributions per member		R 2 485	R 2 522
Average net claims incurred per member		R 2 121	R 2 281
Average administration expenses per member		R 210	R 178
Average managed care per member		R 53	R 51
Average accumulated funds per member		R 15 629	R 15 582
Net claims as % of net contribution		85%	90%
Managed care Management services as % of gross contributions		2%	2%
Administration expenses as % of gross contributions		8%	7%

2. MEDSHIELD TRADEMARK

2.1 - With regards to the abovementioned matter, we confirm that we have obtained a legal opinion on the Medshield Trademarks, which we attached hereto as Annexure "B".

2.2 Please also find attached hereto the following documents from David Khan & Associates:

2.2.1 Letter from David Khan with invoice for R3 million – Annexure “C1”;

2.2.2 Letter from David Khan with invoice for R7 million – Annexure “C2”;

2.2.3 Letter from David Khan with breach notification – Annexure “C3”.

2.2.4 Proof of payment of the amounts – Annexure “C4” and “C5”.

3. ELECTIONS

3.1 With regards to the elections, we have obtained a quote from Shepstone Wylie Attorneys which we attached hereto a Annexure “D” together with the election plan.

3.2 Both PWC and KPMG has undertaken to provide their quotes during the first week of January 2014, this delay being occasion by staff being on leave.

4. INVESTMENTS

Edward Khumalo, Medshield Financial Executive, has met with Mergence Investment Managers and is in the process of meeting with other investment managers as well, and upon conclusion of same we will provide you with a report.

5. ANNUAL FINANCIAL STATEMENTS

The audit plan for 2013 is attached hereto as Annexure “E”.

6. LITIGATION MATTERS

6.1 A claim by EMF Strydom who is dissatisfied with co-payment on an internal prosthesis, the summons has been withdrawn and the complaint is being dealt with at CMS.

6.2 Calabash Health Solutions (R46 209 104.63) – application to set aside ex-parte order heard on the 4th November and awaiting judgement.

- 6.3 HMI Healthcare Corporation and Agility Global Health Solutions (R28 838 313.94 plus a penalty in the same amount) – summons has been drafted and being settled. Medshield require permission to issue the summons and grant the liquidators an indemnity for costs as envisaged by Section 32 of the Insolvency Act.
- 6.4 Neels Barendrecht and 4 others (R46 209 104.63) – Trail is set down for 3 March 2014. Matter is on hold pending the outcome of the application to set aside ex-parte order as per clause 5.1 above.
- 6.5 HMI Healthcare Corporation and Agility Global Health Solutions (no direct monetary claims, relates to action for R46 million as per 5.3 above) – Waiting for allocation of a hearing date.
- 6.6 The actions in 5.2 to 5.4 all relates to the Calabash Health Solutions (Pty) Ltd liquidation.
- 6.7 Old Mutual Healthcare Arbitration (R51 765 282.54) – the arbitration has been moved to August 2014 due to availability of an arbitrator, in process of discovery and further particulars.
- 6.8 Old Mutual Healthcare (R11 143 125.80) – Exception was served and filed and awaiting a date for hearing of the exception.
- 6.9 National Consumer Commission – the matter is currently being held over pending talks between CMS and the offices of NCC.

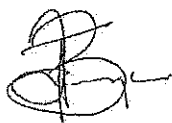
7. CONCLUDING REMARKS

- 7.1 I trust that you will find the above in order.
- 7.2 With regards to your correspondence of 8 November 2013, I confirm that I have dealt with all the matters in the Curator's report of 25 November and this current report.
- 7.3 I confirm that I reserve the right to augment and/or clarify any matters upon receipt of further information and/or documentation.
- 7.4 I will discuss the contents of this report or any other relevant issue in detail with you during our monthly meeting at CMS' offices.

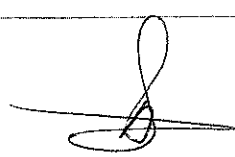



90

SIGNED at JOHANNESBURG on this the 12th day of DECEMBER 2013



**THEMBA LANGA
PROVISIONAL CURATOR
MEDSHIELD MEDICAL SCHEME**



Ex parte

MEDSHIELD MEDICAL SCHEME

In re

ASSIGNMENT OF TRADE MARKS

OPINION

1. My consultant is Medshield Medical Scheme ("the Medical Scheme"), a medical aid scheme registered in terms of the Medical Schemes Act 131 of 1998 ("the MS Act").
2. On 17 October 2013 the Medical Scheme concluded a written "Deed of Assignment Memorandum of Agreement" ("the assignment") with Alumni Trading 264 (Pty) Limited ("Alumni").
3. In terms of the assignment:
 - 3.1. Alumni conveyed and assigned to the Medical Scheme, and the Medical Scheme accepted from Alumni, all of Alumni's right, title and interest in and to the Marks,¹ together with the goodwill of the business symbolized by the Marks (clause 2.1.1);

¹ The assignment does not define "Marks". Clause 1.3, however, defines "The Trade Marks" as "the words 'MEDSHIELD' in the various classes as registered in favour of the assignor in accordance with the Act." For purposes of this opinion I will therefore assume that all references in the assignment to "Marks" refers to "The Trade Marks"



92

3.2. *"the Trade Marks"* mean the word marks *"MEDSHIELD"* in the various classes as registered in favour of Alumni in accordance with the Trade Marks Act 194 of 1993 (*"the TM Act"*);

3.3. the consideration which the Medical Scheme shall pay to Alumni for the assignment of the Trade Marks shall be the amount of R10 million excluding VAT, it being agreed by the parties that the aforesaid consideration constitutes fair and sufficient consideration in respect thereof (clause 2.2);

3.4. Alumni shall assign unto the Medical Scheme all its right, title and interest in and to the said Trade Marks on the effective date, being 15 November 2013 (clause 2.4 read with clause 1.5);

3.5. the assignment is subject to the suspensive condition that the Medical Scheme makes payment of the consideration, in full, on or before the effective date, being 15 November 2013 (clause 3 read with clause 1.5);

3.6. the word mark *"Medshield"* has been registered and entered in the Register of Trade Marks as follows (clause 5.1):

3.6.1. 2010/00522 in class 35 (advertising, business management, business administration, office functions, offering for sale and the sale of goods in the retail and whole-sale trade);

3.6.2. 2010/00523 in class 36 (insurance, financial affairs, monetary affairs, real estate affairs);

3.6.3. 2010/00524 in class 41 (education, providing of training,



entertainment, sporting and cultural activities);

3.7 the Trade Marks were granted on 13 October 2011, with effect from 13 January 2010, and have been registered for a period of ten years, upon the expiry of which same may be renewed every ten years thereafter (clause 5.3 read with annexures "A1", "A2", and "A3" to the assignment).

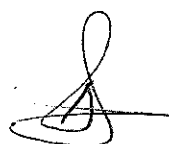
4. have been advised that:

4.1. the suspensive condition was timeously fulfilled, the Medical Scheme duly paid the consideration of R10 million to Alumni, and Alumni in turn assigned all of its right, title and interest in and to the Trade Marks to the Medical Scheme;

4.2. prior to the registration of the Trade Marks, and the use of the Trade Marks by Alumni, the word mark "Medshield" was used by the Medical Scheme;

4.3. the Medical Scheme has formed associated entities (the legal nature of which has not been provided to me) under the name and style of Medshield Loyalty, Medshield Marketing, Medshield Managed Health Care and Medshield Administration ("the associated companies");

4.4. the Council for Medical Schemes ("CMS"), being the statutory body that regulates medical schemes by administering the MS Act and ensuring compliance with its provisions, has raised a query as to why it was, in the circumstances, necessary for the Medical Scheme to have taken assignment of the Trade Marks for a consideration of R10 million (or at all).



94

5. In view of the aforesaid, have been briefed to furnish an opinion on an urgent basis on what the Medical Scheme's common law rights were to use the unregistered mark "Medshield" and whether it was necessary for it to have taken assignment of the Trade Marks.
6. In furnishing this opinion I have been briefed with the following documents: a letter from the Medical Scheme to my instructing attorneys dated 2 December 2013; and the assignment.
7. At common law, an unregistered mark may be protected by the principles relating to passing-off. A passing-off action protects the goodwill or reputation of a trader's business, merchandise or services against a false representation by a competitor that the business, merchandise or service of the competitor is that of or associated with the trader.²
8. In order to succeed with a passing off action against a competitor, the Medical Scheme would thus have to allege and prove a misrepresentation by a competitor. The test is whether there is a reasonable likelihood that members of the public may be confused into believing that the business of the competitor is, or is connected with, that of the Medical Scheme.³
9. In establishing the misrepresentation, the Medical Scheme would have to prove that the unregistered mark was known in the market and that the Medical Scheme's goods, business or service acquired a public reputation or became distinctive from other similar goods, businesses or services.⁴
10. One object of registering a trade mark, or in the present case of acquiring the Trade Marks by way of an assignment, would thus be to dispense with the proof

² Premier Trading Co (Pty) Ltd v Sporttopia (Pty) Ltd 2000 (3) SA 259 (SCA); Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd 1998 (3) SA 938 (SCA)

³ Capital Estate & General Agencies (Pty) Ltd v Holiday Inns Inc 1977 (2) SA 916 (A)

⁴ Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd 1998 (3) SA 938 (SCA) at para 18




of reputation of a mark. The holder of the trade mark could merely institute proceedings based on trade mark infringement. The registration of a mark under the TM Act is, however, required before proceedings can be instituted for trade-mark infringement. The TM Act does not affect the rights of any person at common law to bring an action based on passing-off.

11. The distinction between trade mark infringement and passing off can be summarised as follows:⁵

11.1. Infringement proceedings under the TM Act are directed at a comparison between the registered trade mark as such and the allegedly offending mark as such, whereas in a passing off action the comparison is between the whole get-up of the goods as marketed by the Medical Scheme and the whole get-up of the competitor's goods;

11.2. as I have stated above, in the case of passing off, the Medical Scheme must prove a reputation in the mark or get-up, whereas in proceedings for trade mark infringement the Medical Scheme's reputation is irrelevant.⁶

12. With these principles in mind, the question is thus whether there was any benefit in the Medical Scheme acquiring the Trade Marks by way of an assignment. For the reasons set out below, I am of the view that there was.

13. Firstly, the class 36 Trade Mark includes mainly services rendered in financial and monetary affairs and services rendered in relation to insurance contracts of all kinds. This would include in particular health insurance underwriting.

⁵ Blue Lion Manufacturing (Pty) Ltd v National Brands Ltd 2001 (3) SA 884 (SCA);

⁶ Mettenheimer v Zonquasdrif Vineyards CC (965/12) [2013] ZASCA 152 (19 November 2013) at para 9



96

14. In terms of section 1 of the MS Act "business of a medical scheme" means:

"the business of undertaking liability in return for a premium or contribution --

- (a) to make provision for the obtaining of any relevant health service;*
- (b) to grant assistance in defraying expenditure incurred in connection with the rendering of any relevant health service; and*
- (c) where applicable, to render a relevant health service, either by the medical scheme itself, or by any supplier or group of suppliers of a relevant health service or by any person, in association with or in terms of an agreement with a medical scheme."*

15. In my view, it would thus seem that the business of a medical scheme as carried on by the Medical Scheme would fall under class 36. If that is so, then the benefits flowing from the Medical Scheme having acquired the Trade Mark relating to class 36 are the following:

15.1. the class 36 Trade Mark can be used by the Medical Scheme as a sword against competitors who use the word "Medshield", without the evidentiary difficulties of having to prove a reputation in the case of a passing off action; and

15.2. unless some other trade mark has been registered in respect of the word "Medshield" the Medical Scheme would have acquired exclusivity in its use.

16. Furthermore, the classes 35 and 41 Trade Marks afford the Medical Scheme with broader rights, than those it had under common law, pertaining to *inter alia* advertising, business management and business administration. Although section 26(11) of the MS Act prohibits the Medical Scheme from carrying on any

business other than the business of a medical scheme, the Trade Marks relating to classes 35 and 41 could presumably be used by the Medical Scheme's associated entities, such as Medshield Marketing, Medshield Managed Health Care and Medshield Administration.

17 I turn now to section 36 of the TM Act which deals with the saving of vested rights. It provides as follows:

"Nothing in this Act shall allow the proprietor of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in respect of goods or services in relation to which that person or a predecessor in title of his has made continuous and bona fide use of that trade mark from a date anterior –

- (a) to the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his; or*
- (b) to the registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his,*

whichever is the earlier, or to object (on such use being proved) to the trade mark of that person being registered in respect of those goods or services under s 14."

18. It follows from this that had the Trade Marks not been acquired by the Medical Scheme, Alumni would not have been able to interfere with or restrain the use by the Medical Scheme of the mark "Medshield", provided that the Medical Scheme had made continuous and *bona fide* use of the unregistered mark from a date anterior to the earlier of the use of the mark by Alumni or its predecessor in title or the registration of the Trade Marks.

19. Although section 36 would thus have provided a defence to the Medical Scheme if Alumni instituted trade mark infringement proceedings against it, section 36



98

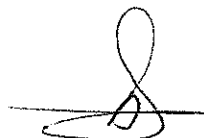
would not have afforded the associated entities with defence (assuming of course that, unlike the Medical Scheme, they did not have any vested rights in terms of section 36).

20. By acquiring the Trade Marks the Medical Scheme therefore probably also avoided litigation with Alumni pertaining to passing-off and/or trade mark infringement.

21. Furthermore, Alumni would have been entitled to continue using the Trade Marks, which could be detrimental to the Medical Scheme as the similarity between the word "*Medshield Medical Scheme*" and "*Medshield*" could give rise to the likelihood of members of the public being confused into believing that the business of Alumni is, or is connected with, that of the Medical Scheme.

22. The next aspect that needs to be considered is section 14 of the TM Act. In terms of section 14, the Medical Scheme could, instead of having acquired the Trade Marks for R10 million, have applied for the registration of the mark "*Medshield*" in relation to those services in class 35 relating to financing services and health insurance underwriting, on the basis of honest concurrent use since the Medical Scheme had been using the mark prior to its use, and registration by Alumni. Although this would have been a much cheaper option, it would not have afforded the Medical Scheme the exclusivity which acquiring the Trade Marks from Alumni did, and it would not have been of assistance to the associated entities (again assuming that section 36 does not apply to them).

23. What is, however, of concern, and which may dilute the benefit of acquiring the Trade Marks from Alumni, is the fact that according to the register of trade marks Alumni still owns three trade marks in respect of the words "*Yourmedshield*" under classes 35, 36 and 41. The similarity between the words "*Medshield*" and "*Yourmedshield*" could give rise to the likelihood of confusion amongst members




of the public. To prevent this risk from materialising, the assignment ought, in my view, to have also included the trade mark "Yourmedshield"

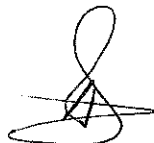
24. Lastly, I mention that this opinion does not relate to:

24.1. the value attaching to the Trade Marks and whether they were in fact worth a consideration of R10 million;

24.2. whether Alumni was entitled to register the Trade Marks in the first place. If, for example, it had no *bona fide* intention of using them as trade marks, either itself or any person permitted by it, then they would have been liable to being removed from the register in terms of section 10 of the TM Act.

25. I advise accordingly.

MTA COSTA
CHAMBERS, SANDTON
6 DECEMBER 2013



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"FA11"
Page 1
100


DEED OF ASSIGNMENT
MEMORANDUM OF AGREEMENT

Entered into by and between

ALUMNI TRADING 264 (PTY) LTD
("The Assignor")

and

MEDSHIELD MEDICAL SCHEME
("the Assignee")

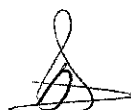
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HFM



RECITALS

1. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:-
 - 1.1 **"THE ASSIGNOR"** means ALUMNI TRADING 264 (PTY) LTD a company with limited liability duly registered and incorporated in accordance with the Company Laws of the Republic of South Africa, herein represented by DAVID NEIL KAHN being duly authorised, which is the registered proprietor of the trade marks;
 - 1.2 **"THE ASSIGNEE"** means MEDSHIELD MEDICAL SCHEME a medical aid scheme registered in terms of the Medical Schemes Act 131 of 1998 herein represented by the duly authorized representative thereof;
 - 1.3 **"THE TRADE MARKS"** mean the word marks "MEDSHIELD" in the various classes as registered in favour of the assignor in accordance with the Act;
 - 1.4 **"THE ACT"** means the TRADE MARKS ACT 194 OF 1993 as amended.
 - 1.5 **"THE EFFECTIVE DATE"** means 15 November 2013.

WHEREFORE IT IS AGREED AS FOLLOWS:

DAVID KAHN  & ASSOCIATES



TM
T.S.O.
H
R.F.M.


2. ASSIGNMENT AND CONSIDERATION

2.1 Now, therefore, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Assignor, the parties agree as follows:

2.1.1 Assignor hereby conveys and assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title and interest in and to the Marks, together with the goodwill of the business symbolized by the Marks.

2.1.2 Assignor represents and warrants that:

- (a) Assignor owns the right, title and interest in and to the Marks;
- (b) All registrations for the Marks are currently valid and subsisting and are in full force and effect;
- (c) Assignor has not licensed the Marks to any other person or entity or granted, either expressly or impliedly, any trademark or service mark rights with respect to the Marks to any other person or entity;
- (d) There are no liens or security interests against the Marks;

DAVID KAHN



& ASSOCIATES

KEM

- (e) Assignor has all authority necessary to enter into this Agreement and the execution and delivery of this Agreement has been duly and validly authorized.
- (f) To the best of the Assignor's knowledge and belief the execution of this Assignment and performance of the Assignor's obligations hereunder shall not violate or conflict with any other agreement to which Assignor is party

2.2 The parties hereby agree that the consideration which the Assignee shall pay to the Assignor for the assignment of the said trade marks shall be the amount of R10 0000 000.00 (ten million) excluding VAT, it being agreed by the parties that the aforesaid consideration constitutes fair and sufficient consideration in respect thereof.

2.3 Payment of the aforesaid consideration shall be effected as follows:

2.3.1 R7 000 000.00 (excluding VAT) on the signature hereof into the trust account of David Kahn and Associates, details which are :

Bank : First National Private Bank

Account No.: 62014483127

Branch Code: 261 251

DAVID KAHN



& ASSOCIATES

Handwritten signatures and initials, including "T.M.", "T.B.L.", "K.F.M.", and a large circular signature.

Handwritten signature.

104

2.3.2 R3 000 000.00 (excluding VAT) on registration of the assignment of the trademarks into the name of the Assignee or 15 November 2013, whichever is the sooner.

2.4 The Assignor shall assign unto the assignee all its right, title and interest in and to the said trade marks on the effective date.

3. **SUSPENSIVE CONDITION**

This assignment is subject to the suspensive condition that the Assignor makes payment of the consideration, in full, on or before the effective date.


4. **REGISTRATION OF ASSIGNMENT**

The Assignor shall immediately on signature hereof, attend to sign all the necessary forms and do all things necessary to enable the Assignee to register the assignment of the trade marks with the registrar in terms of the Act, which the Assignor undertakes at its expense to implement on behalf of the Assignee by no later than the effective date.

5. **TRADE MARKS**

DAVID KAHN  & ASSOCIATES



TM
TAC
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5.1 The word mark "**Medshield**" has been registered and entered in the Register of Trade Marks as follows:


- **2010/00522 in class 35** (advertising, business management, business administration, office functions, offering for sale and the sale of goods in the retail and wholesale-trade);
- **2010/00523 in class 36** (Insurance, financial affairs, monetary affairs, real estate affairs);
- **2010/00524 in class 41** (education providing of training, entertainment, sporting and cultural activities);

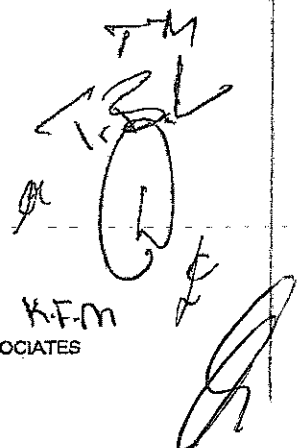
5.2 A copy of the aforesaid registration certificates are annexed hereto marked "**A1**", "**A2**" and "**A3**" respectively.

5.3 The trade marks were granted on the 13 October 2011 ("date of grant") and have been registered for a period of ten years, upon the expiry of which same may be renewed every ten years thereafter;

5.4 The renewable date for the trade marks shall be the 13 January 2020 in respect of which the renewable payment, due in terms of the Act, must be paid on or before the 13 July 2019;

5.5 The assignee is hereby expressly advised that if the trade marks are not used on all or some of the goods/services covered by the classes, for a continuous period of five (5) years or more from the date of grant, an





interested third party may succeed in having the registration, either wholly or in part, removed from the office register.

6. **BREACH, JURISDICTION AND COSTS**

6.1 Should any party breach any of its obligations in terms hereof and persist in such breach for a period of seven (7) days after written notice will have been received from the other party, then the aggrieved party shall be entitled without prejudice to any rights which it may have in terms hereof or at law, to :

6.1.1 specific performance and damages; or

6.1.2 cancel this agreement and claim damages.

6.2 In the event of either party instituting any legal action against the other pursuant to any breach herein, then without prejudice to its other right it may have, same shall be entitled to recover all legal costs incurred by it on an attorney own client scale together with all collection commission and tracing fee

7. **ADDRESSES AND NOTICES**

7.1 For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose domicilium citandi et executandi ("domicilium") as follows:

DAVID KAHN



& ASSOCIATES

TM
TAL
KEM
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7.1.1 Assignor at: c/o David Kahn and Associates Block B, Ground Floor,
Empire Office Park, 55 Empire Road, Parktown, Johannesburg.

7.1.2 Assignee at: 288 Kent Avenue, Randburg, Johannesburg.

7.2 A party may at any time change its domicilium (chosen address) by notice in writing. Provided that the new domicilium consists of, or includes, a physical address at which process can be served.

7.3 Any notice given in connection with this agreement may be delivered by hand; or be sent by prepaid registered post; or be sent by prepaid telegram or cablegram; or be sent by telex or telefax if the domicilium includes a telex or telefax number, to the domicilium chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the domicilium chosen by any party and it shall not be necessary to hand such process or notice to any party personally.

7.4 A notice given as set out above shall be presumed to have been duly delivered:

7.4.1 on the date of delivery if delivered by hand, telex or telefax;

7.4.2 on the fourth day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa.

Handwritten signatures and initials: TM, TSD, KFM, and a large stylized signature.

8. **SEVERABILITY**

If any term or provision or part thereof (in this clause called "the offending provision") contained in this agreement shall for any reason whatsoever be declared or become unenforceable, invalid, or illegal including but without derogating from the generality of the foregoing, a decision by any court, an Act of Parliament or any statutory or other by laws or regulations or any other requirements having the force of law, the other terms and provisions of this agreement shall remain in full force and effect as if this agreement had been executed without the offending provision appearing therein.

9. **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties express or implied not contained in this agreement shall be binding on the parties.

10. **VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties. It is recorded that there exists no collateral and/or other agreements and that this is the sole agreement entered into by and between the parties.

DAVID KAHN



& ASSOCIATES

TM
TBL
LW

KFM

11. INDULGENCES

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS 17th DAY OF OCTOBER 2013
IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:-

1.

Emilio Louedou

[Signature]

Signed by David Neil Kahn for and on behalf
of the Assignor being duly authorized hereto
by the Resolution annexed hereto.

2.

[Signature]

T.B.C

DM

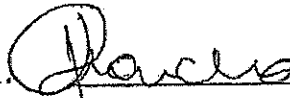
KFM

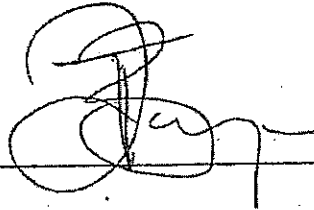
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[Signature]

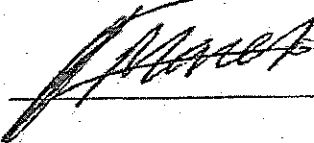
THUS DONE AND SIGNED AT JOHANNESBURG ON THIS 17th DAY OF OCTOBER 2013
IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.


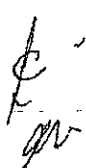
AS WITNESSES:-

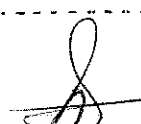
1. 



Signed by the duly authorized representative
for and on behalf of the Assignee.

2. 





"C4"
"FA12" III

Proof of payment

Date: 12/12/2013 Time: 4:48:08 PM

Profile name:	MEDSHIELD MEDICAL SCHEME
Batch reference number:	243354921
Payment reference number:	00000000362027579
Payment date:	05/11/2013
From account name:	MEDSHIELD MEDICAL SCHEME -MEDI
From account description:	MEDSHIELD MEDICAL SCHEME -MEDIBONUS
From account statement description:	DN Kahn & Associates
Beneficiary account number:	62014483127
Beneficiary name:	DN Kahn & Associates
Beneficiary statement description:	MEDSHIELD MEDICAL SCHEME -MEDI
Branch code:	261251
Amount:	7,000,000.00
Real-time:	No

Additional comments by payer:

View your account to confirm that you have received this payment.

- All payments are subject to clearing rules.

Please refer to landing page for cut off times and telephone numbers.

Profile Name: MEDSHIELD MEDICAL SCHEME
Profile Number: 4000029072

User Name: NAWAAL DAVIDS
User ID: 3

Small Business Services: 0860 116 400
Business Banking: 0860 111 055
Corporate Banking: 0860 102 187

<https://businessbanking.nedsecure.co.za/businessbanking/PaymentsMaintainBatchPro...> 2013/12/12

"C5" 112
"FA13"

Proof of payment

Date: 05/12/2013 Time: 10:05:09 AM

Profile name:	MEDSHIELD MEDICAL SCHEME
Batch reference number:	248454777
Payment reference number:	00000000385192696
Payment date:	04/12/2013
From account name:	MEDSHIELD MEDICAL SCHEME -MEDI
From account description:	MEDSHIELD MEDICAL SCHEME -MEDIBONUS
From account statement description:	David Kahn & Associates
Beneficiary account number:	62014483127
Beneficiary name:	David Kahn & Associates
Beneficiary statement description:	MEDSHIELD MEDICAL SCHEME -MEDI
Branch code:	261251
Amount:	3,000,000.00
Real-time:	No

Additional comments by payer:

Please refer your account to confirm that you have received this payment.

- All payments are subject to clearing rules.

Please refer to landing page for cut off times and telephone numbers.

Profile Name: MEDSHIELD MEDICAL SCHEME
Profile Number: 4000029072

User Name: NAWAAL DAVIDS
User ID: 3

Small Business Services: 0860 116 400
Business Banking: 0860 111 055
Corporate Banking: 0860 102 187



181 Jan Smuts Avenue
Rosebank Office Park
Block B, Ground Floor
Parktown North
PO Box 2138, Parklands, 2121

Tel: 011 447 3424
Fax: 011 447 2351
info@langaattorneys.co.za
www.langaattorneys.co.za

TAX INVOICE

Medshield Medical Scheme
P.O. Box 4346
Randburg
2125

Bank Details	
Bank	Nedbank Limited ^
Branch No.	198405 ^
Account Holder	Langa Attorneys ^
Account No.	1984530100 ^
Payment Reference	MAT419/INV01-1349 ^

Account Name	Provisional Curator - Medshield Medical Scheme						
Your				Your VAT Reg No.	N/A		
	COM/DS/MAT419			Our VAT Reg No.	4450177839		
Account No.	MAT419/CNT276	Invoice No.	INV01-1349	Date	30 Oct 2013	Page	1 of 1
Date	Description	Amount excl. VAT		VAT%	VAT Amount		
FEES							
30 Oct 2013	Attending to Governance Implementation Project and Secretariat work in respect of Medshield Medical Scheme.	219 298.25		14.00	30,701.75		
	SUB TOTAL FEES	219,298.25					
	TOTAL VAT	30,701.75					
	TOTAL AMOUNT DUE	250 000.00					

Balances	
Business	250 000.00
Trust	0.00
Investment Trust	0.00

Total Due	
Outstanding Invoices	0.00
Invoice Amount	250 000.00
Sub Total	250 000.00
Less Available Trust	0.00
Total Due by You	^ 250 000.00



NEDBANK

114
"FAIS"
Proof of payment

Date: 25/11/2013 Time: 1:54:35 PM

Profile name:	MEDSHIELD MEDICAL SCHEME
Batch reference number:	242122829
Payment reference number:	000000000358781642
Payment date:	31/10/2013
From account name:	MEDSHIELD MEDICAL SCHEME -MEDI
From account description:	MEDSHIELD MEDICAL SCHEME -MEDIBONUS
From account statement description:	Langa Attomeys
Beneficiary account number:	1984530100
Beneficiary name:	Langa Attomeys
Beneficiary statement description:	MAT419/INV01-1349
Branch code:	196005
Amount:	250,000.00
Real-time:	No

Additional comments by payer:

View your account to confirm that you have received this payment.

- All payments are subject to clearing rules.

Please refer to landing page for cut off times and telephone numbers.

Profile Name: MEDSHIELD MEDICAL SCHEME
Profile Number: 4000029072

User Name: NAWAAL DAVIDS
User ID: 3

Small Business Services: 0860 116 400
Business Banking: 0860 111 055
Corporate Banking: 0860 102 187



115
"FA 16"

Mr. Themba Langa
Curator
Medshield Medical Scheme

Ref: Medshield Medical Scheme Curatorship 2012
Enq: Stephen Mmatli
t: 012 431 0578
f: 012 431 0678
e: s.mmatli@medicalschemes.com
Date: 21 January 2014

Dear Sir.

MEDSHIELD MONTHLY MEETING WITH CURATOR

1. The meeting on 20 December 2013 between yourself and officials from this Office relating to your monthly reports refers. We confirm the deliberations at the aforesaid meeting as follows:

2. **The trademark concern.**

It came as a complete surprise, despite your unequivocal assurance at the monthly meeting held on 6 November 2013 that:

- a. the matter was capable of resolution and that the purchase of the Medshield trademark had as yet not been concluded;
- b. you would seek legal advice as required by the office; and
- c. you would seek this office's approval before making any commitment in this regard;

you had already signed the agreement and effected payment of R7 million to DN Kahn and Associates at that point in time.

We also noted that after the meeting of 6 November 2013 you did seek an opinion, although not from an intellectual property law firm as had been requested by this office. It is indicated in the opinion by counsel that it was necessary for the scheme to have taken assignment of the trademark, but that he could not express himself on the quantum of R10 million.

When challenged at the December meeting about the payment of the full quantum to DN Kahn and Associates and your failure to have disclosed the relevant facts concerning the transaction, you stated that there was a misunderstanding. You alleged that you had advised us on 6 November 2013 that there was a "commitment" to pay and for this reason you cannot be accused of having misled the regulator. You further indicated that you understood why we laboured under the impression that the matter would be resolved in favour of the scheme.

When writer pointed out that we had unequivocally recorded your undertaking in our letter of 8 November 2013 and that you had not challenged such recordal, you stated that you had been travelling at the time and had requested the scheme management to respond.

When asked whether you had taken steps to seek an independent evaluation of the trademark instead of simply accepting the value suggested by DN Kahn and Associates, you confirmed that you had not done so. You further indicated that you felt you were purchasing the Trademark at a bargain, as you had managed to secure a discount from the original fee of R30 million to the final figure of R10 million.

3. Utilisation of Langa Attorneys.

Writer pointed-out a conflict of interest regarding the use of your own law firm for scheme related business in the sum of R250 000. You reacted angrily (after first having some difficulty recalling the event), said "*There's no need to be vindictive*" and then contended that there was no conflict as this was a relative matter of materiality. You alleged that you had faced an urgent situation pertaining to the development of a Governance Framework where advice was required to be sought and that you needed to source it from the best possible source at the best fee. You further alleged that your firm does an enormous amount of work for the scheme in administration, support and other services, for which no charge is levied. You contended that you are not conflicted in having used the firm on a once-off basis in an emergency.

To our surprise, although advocating the exceptional circumstances that allegedly warranted using your firm, you could not recall the precise nature of the matter for which advice had been sought.

You undertook to revert with further details in this regard.

4. Entering into long term contracts with providers prior to expiry of your term.

We confirm your advice that you disagreed with our concerns that the new board would be hamstrung by your actions in binding the scheme on long-term contracts. Writer indicated the concern was that a new board may disagree with the value-add components of such agreements and would then be unable to terminate them without incurring substantial penalties in damages claims. You alleged that you were not required to report to this office on all the detail of your actions and that the economies of scale that long-term agreements brought, justified your actions. You further alleged that these contracts were in any event capable of termination on reasonable notice being given.

We advise that the matters referred to above are of serious concern to this office and as a result have taken them on advisement. In the interim this office's rights are reserved.

Yours sincerely



STEPHEN MMATLI
HEAD: COMPLIANCE & INVESTIGATIONS
COUNCIL FOR MEDICAL SCHEMES

Chairperson: Prof. Y Veriava Chief Executive & Registrar: Dr M Gantsho
Block A Eco Glades 2 Office Park, 420 Witch-Hazel Street, Ecopark, Centurion 0157
Tel: 012 431 0500 Fax: 012 430 7644 Customer Care: 0861 123 287
Information@medicalschemes.com www.medschemes.com



Medshield Medical Scheme
Postbox 4346, Randburg 2125
288 Kent Avenue, Randburg 2194
Contact Centre Number
086 000 2120, www.medshield.co.za



^{"FA17"}
MEDSHIELD
your kind of care

117

Mr Stephen Mmatli
Head: Compliance & Investigations
Council for Medical Scheme
Block A, Eco Glades 2 Office Park
420 Witch-Hazel Street
Ecopark
Centurion

Per e-mail: s.mmatli@medicalschemes.com

24 January 2014

Dear Mr Mmatli

RE: MEDSHIELD MONTHLY MEETING WITH CURATOR

1. Your correspondence of the 21st January 2014 refers and I have noted the contents thereof with shock and dismay.

Your alleged trademark concern

2. It is true and correct that as at the 6th November 2013, the scheme had already entered into a written agreement to acquire the trademark. You said you did not understand this fact to be true as at the 6th November 2013, notwithstanding a written and signed copy of the agreement being provided to you and your colleagues.

3. You allege that your recordal does not reflect what is presently the truth, in which instance, why don't you rectify your own record? Your intention is to stoke emotions and falsehood around the existence of a contract that the scheme, through the office of the curator, has correctly decided to enter into as the scheme had to engage or embark into relationships that would contribute positively to the welfare of members. Further, the intention is to ensure that the scheme's offerings, in the market, are seen to be sticky and competitive.

4. It is clear to me that if Stephen and Jaco were the mind of the scheme, they would have probably handled the matter differently from Themba Langa. However, this is not for you to seek to stoke a fight about something that the regulator was not seized with, at the time the decision was made. The fact that the regulator, not the registrar, second guesses the curator does not necessarily make the regulator to be correct or righteous. Stephen, you are simply seeking to usurp the duty of the curator. The regulator should regulate and not pick up fights about business decisions that do not concern the regulator. I don't understand why you and Jaco are always on a warpath against me.



5. I understand that there has always been an urgent anxiety to remove me as curator, for emotions which are known to you and Jaco. It is unfortunate that as a regulator you have made a commitment to always stoke a fight and tension whenever you don't like my business decisions. By the way, you don't have to like my business decisions, even when you don't like my business decisions that do not make my business decisions to be what you perceive them to be because it is simply not your call to decide on such issues.
6. The business decision to acquire the trademark is within my competency and is entirely lawful, notwithstanding your dislike or reservations. I have raised my concern with the Chairman of the Council and the Registrar that you seem to hate me and therefore seek to give such hatred regulatory "expression".
7. In our last meeting, I raised my concerns with you that you and your colleagues are always single-minded and adverse against any business decisions I take. I told the Registrar in your presence on how many attempts I have tried to reach out to you but to no avail. Which culminated in September 2013 when you clandestinely prepared a court application to remove me on the basis of false and incorrect allegations.
8. If you and your colleagues, namely Jaco and Craig, are of the view that to reduce an amount of R30 million to R10 million is not good for the scheme, then what do you suggest should have been the price and on what basis?

Secretarial services / utilisation of Langa Attorneys

9. I just don't understand what makes you to be so desperate to fabricate falsehood. Probably to your defence, you deliberately failed to record what I told you which is not entirely surprising given your single-mindedness and negativity/hostility towards me. I have a duty towards the scheme, as per the court order, and it is incumbent on me to undertake whatever is reasonable and fair to execute my duties and responsibilities as a Provisional Curator. Notwithstanding the foregoing, I expect you to continue to hatch more dark thoughts and motives as this is how you seem to establish your identity.

Entering into long term contract

10. It is within my competence and authority, as per the court order, to enter into contracts with third parties for the benefit of the scheme. The fact that you and Jaco do not like it does not colour the transaction. What it actually does, is further displays the utmost hatred and misdirection of the mind against me.



119

11. Kindly note that I equally reserve my rights to enforce the relevant empowering provisions of the court order that approved me as Provisional Curator, without fear or favour, and that I further confirm that I will escalate this matter to the Registrar.

Regards

THABANG LANGA
PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME



"FA18.1"

120

Mrs L A Modiba
AVOIR Healthcare Consultants
PO Box 50697
Wierda Park
0300

Ref: Compliance Sect43 Medshield Marketing
Enq: Jaco Lubbe
t: 012-431 0598
f: 012-431 0698
e: j.lubbe@medicalschemes.com
Date: 17 January 2014

Per e-mail: lebom@avoir.co.za

**ENQUIRY IN TERMS OF SECTION 43 OF THE MEDICAL SCHEMES ACT: PAYMENTS IN
CONTRAVENTION OF SECTIONS 26(5) AND 26(11): AVOIR HEALTHCARE CONSULTANTS:
BROKERAGE NUMBER ORG2577: LEOGANG ANNA MODIBA BR 24585**

1. Reference is hereby made to the attached letter dated 13 January 2014 addressed to you by Platinum Health Medical Scheme regarding the offering of free airtime to potential new members of Medshield Medical Scheme as well as free funeral cover.
2. The letter of Platinum Health is in our view self explanatory, however you are hereby required to provide this Office with the following:
 - 2.1 Your comprehensive response to the allegations contained in the letter of Platinum Health including copies of all your marketing material and application forms;
 - 2.2 Details of all new members who has signed up with Medshield at the Two Rivers Mine over the past few days including copies of their application forms;
 - 2.3 Details of all brokers and/or persons assisting in the signing up of such members through your brokerage; and
 - 2.4 A copy of the contract between yourself and Medshield as well as proof of all payments received from Medshield regarding the marketing campaign from them.
3. The Curator will also be copied on this letter and he will be required to also respond as this Office views the unfair marketing and provision of insurance products in a very serious light.
4. You are furthermore directed to immediately remove these products from the scheme's product offerings.
5. Your response is to reach this Office by no later than Friday, 14 February 2014 at 16:00.

Yours truly


Stephen Mmatli
Head: Compliance & Investigations
Council for Medical Schemes

Chairperson: Prof. Y Veriava Chief Executive & Registrar: Dr M Gantsho
Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion, 0157
Tel: 012 431 0500 Fax: 012 430 7644 Customer Care: 0861 123 267
Information@medicalschemes.com www.medschemes.com

"FA18.2"
121



**PLATINUM
HEALTH**

Private Bag x 82081

RUSTENBURG 0300

Tel: (014) 591 3000 Fax: (014) 591 4567

e-mail: phclientliaison@angloplat.com

13 January, 2014

**Miss Lebo Modiba
Chief Executive Officer
AVOIR Healthcare
Route 21 Corporate Park
5 Regency Drive
Block C
Irene, Centurion, 0062**

Medshield marketing at Two Rivers Mine

As you are aware it has been agreed that all A&B band employees at Two Rivers Mine will have a choice to become members of either Platinum Health Medical Scheme or Medshield wef 1 February 2014. Marketing commenced today, 13 January 2014 and will continue until 29 January 2014. During this period employees will be given the opportunity to join either of the medical schemes.

Both the Platinum Health Platcap and Platcomprehensive options are significantly cheaper than the Medshield Medivalue option and whilst Platcap offers similar benefits the Platcomprehensive offers significantly better benefits. Herewith a comparison of contributions between the options:

	Platcap (R0-6250)	Platcap(R6251-9700)	Platcomprehensive(R0-9700)	Medivalue
Principal Member	R590	R700	R775	R1158
Adult dependant	R590	R700	R775	R1008
Child dependant	R240	R300	R275	R 315

It has been brought to my attention that Avoir marketing agents (one being Maria) have been making promises to the employees of Two Rivers that they will be receiving R50 free air time per month irrespective of whether they use Vodacom, MTN or CellC and a funeral policy of R25 per month if they join Medshield. These incentives are in contravention of Sec 26(5) of the Medical Schemes Act which provides as follows:

"No payment in whatever form shall be made by a medical scheme directly or indirectly to any person as a dividend, rebate or bonus of any kind whatsoever."

This contravention of the Medical Schemes Act should be stopped immediately and will be brought to the attention of mine management, the Curator of Medshield Medical Scheme and the Council of Medical Schemes as employees are being influenced to their own detriment by offering these illegal incentives.

**P.W. Mboniso
Principal Officer**

Medshield Medical Scheme
PO Box 4346, Randburg 2125
288 Kent Avenue, Randburg 2194
Contact Centre Number
086 000 2120, www.medshield.co.za



MEDSHIELD
your kind of care

"FA19"

122

Mr Stephen Mmatli
Head: Compliance & Investigations
Council for Medical Scheme
Block A, Eco Glades 2 Office Park
420 Witch-Hazel Street
Ecopark
Centurion

Per e-mail: s.mmatli@medicalschemes.com

24 January 2014

Dear Mr Mmatli

RE: ENQUIRY IN TERMS OF SECTION 43 OF THE MEDICAL SCHEMES ACT: PAYMENT IN CONTRAVENTION OF SECTIONS 26(5) AND 26(11) : AVOIR HEALTHCARE CONSULTANTS



1. Your letter dated 17 January 2014 refers and the contents thereof have been noted with dismay.
2. I honestly cannot believe that as a regulator, you can conclude on the basis of a single flimsy, false and one-sided information which is contained in the letter dated 13 January 2014 from Platinum Health. It is incompatible for the regulator to summarily decide that the basis of a section 43 enquiry has been satisfied without us being heard. This is further complicated by the fact that the owner of Platinum Health is a close friend of Jaco Lubbe.
3. It is unfortunate that you are chronically biased and hateful against me, to the extent of omitting important regulatory steps that you have to adhere to before making up your mind on whether or not the complaint deserves to be considered as a section 43 enquiry or not.
4. We would revert to you in due course after we have received legal advice in this matter. Further, I confirm that I will escalate this matter to the Registrar.

Regards

THEMBA LANGA
PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME



"FAzo"
123

Savage Jooste & Adams

BEE RATED: Certificate No. EMEX0VWY
Pretoria Office

THE PROVISIONAL CURATOR
MEDSHIELD MEDICAL SCHEME
BY E-MAIL : langa@langaattorneys.co.za
curator@medshield.co.za

141 Boshoff Street,
Nieuw Muckleneuk, Pretoria
PO Box 745 Pretoria 0001 RSA
Docex 58 Pretoria
e-Mail mariuss@savage.co.za
Telephone (012) 452-8200
International Tel 2712 – 452 8200
Fax Litigation (012) 452-8230
Web address: www.savage.co.za

Your Ref:

For Att:

Jr Ref: M VAN STADEN/JVC666/334689

Date:

27 JANUARY 2014

Dear Mr Langa,

CANCELLATION OF APPOINTMENT AS PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME

1. We act on behalf of the Registrar of Medical Schemes.
2. On 2 October 2012 you were appointed as provisional curator of Medshield Medical Scheme ("Medshield") in terms of the provisions of Section 56(1) of the Medical Schemes Act 131 of 1998 ("the MS Act"), read together with Section 5(1) and (2) of the Financial Institutions (Protection of Funds) Act 28 of 2001 ("the FI Act"), by order of court.
3. In terms of Section 5(6) of the FI Act you act under the control of our client. In terms of Section 5(9) of the FI Act the court may on good cause shown cancel the appointment of a curator.
4. Our client holds the view that recent events concerning the exercise of your powers have manifested good cause for your removal. These include concluding the transaction for the "acquisition" of the Medshield trademark and the lack of candour in reporting thereon to our

LEGAL EXCELLENCE THROUGH SPECIALISED EXPERTISE

Savage Jooste & Adams Inc Reg No 1978/000724/21

Directors

PF Viljoen (Chairman) M van Staden TS Lefteris-Kartoudes RG Hayes
WD Forrester MM Haasbroek RKH Makole MM Swanepoel
MS Booysens JK Hendey M Gresse

Associates

HFP de Swardt N Marshall

Assisted by

C Van Niekerk A Nel B Kgoebane M Ferreira AQ Osman L van Niekerk
A van Niekerk JA van der Westhuizen WA Johnston D vd Walt F Storm CL Louw

Accounts Manager

SJ Bohm



client. In addition you fail to act under the control of our client and the relationship between our client and yourself has broken down.

5. Our client believes that in the best interests of the members of Medshield you should resign and a new provisional curator be appointed in your stead. Our client affords you until 16h00 on Wednesday 29 January 2014 to indicate whether you intend resigning on the appointment of a new provisional curator taking effect, failing which our client intends lodging an urgent application calling for your removal.
6. This letter should not be construed as an exhaustive indication of the grounds of good cause calling for your removal and our client reserves his rights to add to and amplify such grounds.
7. We trust that you will adhere to our client's request and indicate your willingness to resign.

Yours faithfully

M VAN STADEN
SAVAGE, JOOSTE & ADAMS INC

Savage Jooste & Adams Attorneys
Attention: M Van Staden

Email: mariuss@savage.co.za

And Fax: 0124528230

Date 28 January 2014
Your ref M Van Staden/jl/C666/334689
Our ref I13985/SJ Thema/K Moodley/hk
Direct dial (27 11) 775-6386
Direct fax 086-688-1489
sjt@rmlaw.co.za

By E-mail

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"WITHOUT PREJUDICE"

Dear Sirs,

CANCELLATION OF APPOINTMENT AS PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME

1. We refer to the above matter and to your letter addressed to the Provisional Curator of Medshield Medical Scheme, Mr Themba Langa, dated 27 January 2014.
2. We are instructed to act on behalf of the Provisional Curator ('our client') in this matter and your aforementioned letter has been handed to us for advice and assistance with a response.
3. We are instructed to advise you that your aforementioned letter does not provide our client with sufficient details and particularity to enable our client to obtain advice and to make an informed decision regarding your client's proposition in paragraph 5 of your letter under reply.
4. We have to appreciate that the decision our client is called upon to make is of such a serious and drastic nature that our client would have to think through and we are further instructed that the timeframe within which he is called upon to make this decision is too short and unreasonable under the circumstances.
5. In the circumstances, we would be obliged if you could,

Tel +27 11 286 6900
Fax +27 11 286 6901
DX 7 Sandton Square
4 Johannesburg

22 Fredman Drive
Sandton, Johannesburg
P O Box 78333
Sandton City 2146

Routledge Modise Inc
Registration Number 1992/006150/21
VAT Registration Number 4430134611
www.rmlaw.co.za



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CHIEF EXECUTIVE OFFICER May-Elaine Thomson* **CHIEF FINANCIAL OFFICER** Paul Labuschagne*
*not attorney/not director

From 1 December 2013, Routledge Modise Inc has combined with Hogan Lovells to become part of the Hogan Lovells international legal practice. "Hogan Lovells" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. For more information about Hogan Lovells, see www.hoganlovells.com.

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[Handwritten signatures]

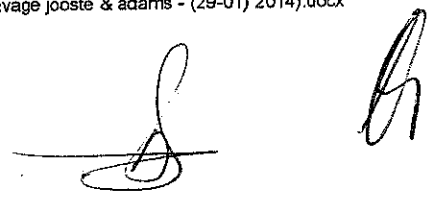
rm

- 5.1 Furnish our client with sufficient details and particularity which informs your client's view to make this proposition, to enable our client to obtain proper advise on the reasons behind your propositions and the drastic decision he is expected to make; and
- 5.2 Grant our client additional time of a week, at least, after being furnished with the required information in 5.1 herein above, within which to obtain due advice, respond to your letter and to inform you of what his attitude to your proposition is.
- 6. We trust our client's aforementioned requirements are reasonable under the circumstances and we look forward to receiving the required information and/or details, on his behalf, as soon as possible, at least by Monday, 3rd February and we can revert by Monday, 10th February.
- 7. We shall also await your confirmation of the additional time afforded to our client within which to respond fully to your proposition.
- 8. All our client's rights are duly reserved.
- 9. We shall wait for your soonest response.

Yours faithfully

SJ Thema
Director
Routledge Modise Inc

TRANSMITTED ELECTRONICALLY WITHOUT SIGNATURE

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'S' with a long horizontal stroke extending to the left. The second signature is a stylized, cursive 'A'.



127
"FAZZ"

Savage Jooste & Adams

BEE RATED: Certificate No. EMEX0VWY
Pretoria Office

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International Tel 2712 - 452 8200
Fax Litigation (012) 452-8230
Web address: www.savage.co.za

ROUTLEDGE MODISE
BY E-MAIL : sjt@rmlaw.co.za

Your Ref: I13985/SJ THEMA/K MOODLEY/hk

For Att:

r Ref: M VAN STADEN/jl/C666/334689

Date:

30 JANUARY 2014

Dear Mr Thema,

CANCELLATION OF APPOINTMENT AS PROVISIONAL CURATOR: MEDSHIELD MEDICAL SCHEME

1. Thank you for your correspondence of the 29th instant. To the extent we do not respond to every allegation contained therein we reserve our client's rights.
2. Our client has afforded your client opportunity to resign, to obviate the necessity of an application and accompanying reputational risk, however, to no avail.
3. Our client has resolved to afford your client further opportunity to resign. Your client is therefore afforded until 16h00 tomorrow to resign, failing which our client will lodge an urgent application calling for your client's removal.
4. Our client has furnished the reasons for his decision and is not prepared to expand on or debate such reasons in correspondence. Our client will expand thereon in the papers to be lodged at court, should your client refuse to resign.

LEGAL EXCELLENCE THROUGH SPECIALISED EXPERTISE

Savage Jooste & Adams Inc Reg No 1978/000724/21

Directors

PF Viljoen (Chairman) M van Staden TS Lefteris-Kartoudes RG Hayes
WD Forrester MM Haasbroek RKH Makole MM Swanepoel
MS Booyens JK Hendey M Gresse

Associates

HFP de Swardt N Marshall

Assisted by

C Van Niekerk A Nel B Kgoebane M Ferreira AQ Osman L van Niekerk
A van Niekerk JA van der Westhuizen WA Johnston D vd Walt F Storm CL Louw

Accounts Manager

SJ Bohm



Page 2

5. Our client is acting in the best interests of the scheme members and is not prepared to allow your client to continue managing the scheme.
6. Your client must make up his mind.

Yours faithfully

M VAN STADEN
WAGE, JOOSTE & ADAMS INC

A handwritten signature, possibly 'H', written in a cursive style.

A handwritten signature, possibly 'A', written in a cursive style.

From: Themba Langa <langa@langaattorneys.co.za>
Date: 04 February 2014 at 3:21:04 PM SAST
To: Stephen Mmatli <s.mmatli@medicalschemes.com>
Subject: RE: Meeting with Medshield Curator

"F A.23"
129

Dear Stephen

I have still not received your urgent court papers, at the time of writing this correspondence. However, I have made up my mind to resign with effect from the 28 February 2014. I'll approach you on the handover procedure and all attendant issues.

regards



themba langa
181 Jan Smuts Avenue, Rosebank Office Park, Block B, Ground Floor, Parktown North
PO Box 2138, Parklands, 2121 | www.langaattorneys.co.za
Tel: 011 447 3424 Fax: 011 447 2351 Cell: 082 789 8545 langa@langaattorneys.co.za

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-----Original Appointment-----

From: n.mninzela@medicalschemes.com [mailto:n.mninzela@medicalschemes.com] **On Behalf Of** Stephen Mmatli
Sent: 17 December 2013 09:09 AM
To: Themba Langa; Jaco Lubbe; Tebogo Maziya; Thembekile Phaswane; Craig Burton-Durham; Milford Chuene; Lerato Sehularo; Louis Pautz; Melani Winkler
Cc: Nomalanga Serake; 'desiree@langaattorneys.co.za'; Mamose Motloutsi; Glenda Mosley; Sameer Rajab; Desiree Sorrell
Subject: Meeting with Medshield Curator
When: 20 December 2013 10:00 AM-11:00 AM (UTC+02:00) Harare, Pretoria.
Where: Block A, Eco Glades 2 Office Park, 420 Witch-Hazel Avenue, Eco Park, Centurion (Ulwazi Boardroom)
Importance: High

<< File: Curator's report - 25 November 2013.pdf >> << File: SKMBT_C28013112515460.pdf >> << File: SKMBT_C28013121311160.pdf >> << File: Curator's report - 12 December 2013.pdf >>

A handwritten signature in black ink, appearing to be 'A.23' or similar, located at the bottom right of the page.



Mr. Themba Langa
Curator
Medshield Medical Scheme

Ref: Medshield Medical Scheme Curatorship 2012
Enq: Stephen Mmatli
t: 012 431 0578
f: 012 431 0678
e: s.mmatli@medicalschemes.com
Date: 7 February 2014

Dear Themba

CANCELLATION OF APPOINTMENT AS PROVISIONAL CURATOR:
MEDSHIELD MEDICAL SCHEME

1. I refer to your e-mail dated 4 February 2014, wherein you indicated that you have *"made up (your) mind to resign with effect from the 28 February 2014"*.
2. Kindly note that the Registrar is busy finalising the application calling for the cancellation of your appointment as provisional curator. However, in order to finalise same, **your resignation on 25 February 2014** (Tuesday is the date for the hearing of applications in the High Court), **taking effect upon the appointment of a new provisional curator**, is required.
3. The reason for our request for your formal resignation lies in the following:
 - 3.1 Your notification that you *"have made up"* your mind to resign, arguably does not equate to a resignation, only to an intention to do so.
 - 3.2 It is imperative that your resignation only takes effect upon the appointment of a new provisional curator. Failing to specify same would lead to an Interregnum and leaving the scheme without management control.
4. We therefore look forward to receiving your formal resignation in terms of the above, as a matter of urgency.

Yours sincerely

Stephen Mmatli
Head: Compliance & Investigations

"FAZA-ZU"
131



Mr Themba Langa
Curator
Medshield Medical Scheme

Ref: Medshield Medical Scheme Curatorship 2012
Enq: Stephen Mmatli
t: 012 431 0578
f: 012 431 0678
e: s.mmatli@medicalschemes.com
Date: 7 February 2014

Dear Themba

MEDSHIELD MONTHLY MEETING WITH CURATOR

1. I refer to your letter dated 24 January 2014.
2. From the outset I wish to emphasise that the Registrar is deeply concerned about its contents.
3. Suffice it, however, to state at this stage that this office rejects the gratuitous allegations made against the employees and officers of the Council for Medical Schemes contained in your letter, with disdain.
4. Other than a denial, I do not wish to engage you in an exchange of correspondence, to respond to the allegations made in your correspondence under reply. I do not believe that it will serve any fruitful purpose.
5. Both my rights and the rights of any other employee of the Council for Medical Schemes are reserved.

Yours sincerely

A handwritten signature in dark ink, appearing to read "S. Mmatli", written over a horizontal line.

Stephen Mmatli
Head: Compliance & Investigations

Two handwritten signatures in dark ink, one on the left and one on the right, both appearing to be initials or short names.

132

From: Themba Langa [mailto:langa@langaattorneys.co.za]
Sent: Friday, February 07, 2014 3:07 PM
To: Stephen Mmatli
Cc: Jaco Lubbe; Monwabisi Gantsho
Subject: RE: Medshield

"FA 25"

Dear Stephen

I disagree with your view and intend to vehemently oppose the envisaged application of the 25th February 2014 as it premature and misleading.

Regards
Themba



themba langa
181 Jan Smuts Avenue, Rosebank Office Park, Block B, Ground Floor, Parktown North
PO Box 2138, Parklands, 2121 | www.langaattorneys.co.za
Tel: 011 447 3424 Fax: 011 447 2351 Cell: 082 789 8545 langa@langaattorneys.co.za

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From: Stephen Mmatli [mailto:s.mmatli@medicalschemes.com]
Sent: 07 February 2014 11:11 AM
To: Themba Langa
Cc: Monwabisi Gantsho; Jaco Lubbe; Milford Chuene; Neo Mninzelwa
Subject: Medshield

Two handwritten signatures are visible at the bottom right of the page. The one on the left is a stylized signature, possibly 'S. Mmatli', and the one on the right is a more fluid, cursive signature.

Destination	Start Time	Time	Prints	Result	Note
00114472351	02-11 18:17	00:11:46	040/133	Cont	
00114472351	02-11 18:32	00:51:32	093/133	OK	

133

Note TMR: Timer TX, POL: Polling, ORG: Original Size Setting, FME: Frame Erase TX,
 MIX: Mixed Original TX, CALL: Manual TX, CSRC: CSRC, FWD: Forward, PC: PC-Fax,
 BND: Double-Sided Binding Direction, SP: Special original, FCODE: F-code, RTX: Re-TX,
 RLV: Relay, MBX: Confidential, BUL: Bulletin, SIP: SIP Fax, IPADR: IP Address Fax,
 I-Fax: Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
 TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer,
 Refuse: Receipt Refused, Busy: Busy, M-Full: Memory Full,
 LOVR: Receiving length Over, POVER: Receiving page Over, FIL: File Error,
 DC: Decode Error, MDN: MDN Response Error, DSN: DSN Response Error.



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THEMBA BENEDICT LANGA N.O.
 FAX : (011) 447 2351

Your Ref: For Att:
 Of: M VAN STADEN/j/C666 Date: 11 FEBRUARY 2014

Dear Sirs,

THE REGISTRAR OF MEDICAL SCHEMES / MEDSHIELD SCHEME: TB LANGA N.O.

We refer to the above and attach hereto an urgent application which will be issued tomorrow.

Yours faithfully

M VAN STADEN
 SAVAGE, JOOSTE & ADAMS INC

LEGAL EXCELLENCE THROUGH SPECIALISED EXPERTISE

Savage Jooste & Adams Inc Reg No 1978/000724/21

Directors PF Viljoen (Chairman) M van Staden TS Lefteris-Kartoudes RG Hayes
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 HFP de Swardt Z Olivier
 C Van Niekerk A Nel B Kgoebane MW Van Dyk M Ferreira N Marshall
 A Q Osman P Sookoo LM Brookshaw L van Niekerk SJ Botha
 van Niekerk
 Accounts Manager SJ Bohm

Johannesburg Office
 P O Box 41088
 CRAIGHALL
 2024
 TEL: (011) 325-0830/1

11/02/2014 18:17

Serial No. AOR6041001049

TC: 1534649

Destination	Start Time	Time	Prints	Result	Note
00117167000	02-11 16:44	01:32:57	133/133	OK	

Note TMR: Timer TX, POL: Polling, ORG: Original Size Setting, FME: Frame Erase TX,
 MIX: Mixed Original TX, CALL: Manual TX, CSRC: CSRC, FWD: Forward, PC: PC-Fax,
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 International Tel 2712 - 452 8200
 Fax Litigation (012) 452-8230
 Web address: www.savage.co.za

MEDSHIELD MEDICAL SCHEME
 FAX : (011) 716 7000

Your Ref: - For Att: -
 Our Ref: M VAN STADEN/jl/C666 Date: 11 FEBRUARY 2014

Dear Sirs,

THE REGISTRAR OF MEDICAL SCHEMES / MEDSHIELD SCHEME: TB LANGA N.O.

We refer to the above and attach hereto an urgent application which will be issued tomorrow.

Yours faithfully

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