



PRESS RELEASE

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Contact: Customer Care Centre
Tel: 0861 123 267
E-mail: information@medicalschemes.com
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Press release 8 of 2014: CMS triumphs in two notable cases

The Council for Medical Schemes (CMS) recently had two cases ruled in its favour, and in the bigger picture to the benefit of members of medical schemes.

CMS v Advocate Boyce Mkhize

On 23 May 2014 the application for leave to appeal by Advocate Boyce Mkhize was denied by Judge Fayeenza Kathree-Setiloane in the South Gauteng High Court in Johannesburg following an order made by her in the North Gauteng High Court in Pretoria last year.

The court had ordered that former trustee of Liberty Medical Scheme (Liberty), Adv Mkhize pay back the R1.7 million he had received from the scheme in terms of an illegal settlement agreement which saw him prematurely resigning from the scheme's Board and agreeing not to assist any regulatory or other authority with any possible investigation into the scheme.

Liberty Health Medical Scheme was not part of this appeal process and indicated to CMS shortly after the ruling of the Court last year that they would abide by the decision and not take the matter further. As a result, Adv Mkhize and the CMS were the only parties to this application for leave to appeal, with CMS opposing. Judge Kathree-Setiloane refused the application for leave to appeal with costs.

CMS will now, together with the scheme, follow up the matter to ensure recovery of the funds in the interests of the Liberty Health Medical Scheme and its members.

CMS v Genesis Medical Scheme

A Supreme Court of Appeal (SCA) ruling on 21 May 2014 dismissed a petition by the Genesis Medical Scheme for leave to appeal against a judgment of the North Gauteng High Court in which the court found that the Genesis Medical Scheme had failed to exhaust internal remedies as prescribed by the Promotion of Administrative Justice Act, before approaching the High Court, on the grounds that there were no reasonable prospects of success.

The ruling, handed down by Judges Mohammed Navsa and Kevin Swain, follows a December 2013 application for leave to appeal against a decision handed down by Judge Cynthia Pretorius in November that year, and opposed by the CMS.

Genesis wanted the court to set aside a ruling of the CMS' Appeals Committee and to refer the matter back to a differently constituted Appeals Committee for a rehearing. It also wanted exemption from the requirement to exhaust internal remedies before approaching the courts. Decisions of the Registrar can be appealed to the Appeals Committee of CMS, and its rulings in turn are required to be challenged with the independent Appeal Board before parties are able to approach the courts. This requirement may only be waived under exceptional circumstances.

The matter for leave to appeal was heard on 4 February 2014 and the judgement was handed down on 11 February 2014. The court dismissed the application for leave to appeal with costs stating that it was of the opinion that another court would not come to a different conclusion. Genesis was not satisfied with the outcome and petitioned the Supreme Court of Appeal in March 2014 which considered the petition.

The CMS is very pleased with the outcome of all three applications and will proceed with the recovery of the legal costs in these matters.

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Press release prepared by:

Silindubuhle Mnqeta
Customer Relations Officer
Council for Medical Schemes
012 431 0437
s.mnqeta@medicalschemes.com

For more information

Customer Care Centre
Council for Medical Schemes
0861 123 267
information@medicalschemes.com

Media enquiries

Dr Elsabé Conradie
Head: Stakeholder Relations
Council for Medical Schemes
012 431 0430
e.conradie@medicalschemes.com