



## PRESS RELEASE

Reference: SCA confirms CMS' Medshield curatorship  
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### **Press Release 14 of 2014: SCA confirms CMS placing Medshield under curatorship**

The Supreme Court of Appeal (SCA) found that the material irregularities at Medshield medical scheme justified the appointment of a curator by the Registrar of the Council for Medical Schemes (CMS) and that it was in the interest of the beneficiaries of the scheme.

The bench of 6 judges confirmed (on 16 September) that Judge Murphy correctly granted the interim and final order of curatorship in the North Gauteng High Court. Ten of the former Medshield Board of Trustees (BOT), who were removed by the curatorship in 2012, brought the application to the SCA and contended that the Registrar could have used a lesser sanction than curatorship to deal with its regulatory concerns.

The appeal by the now ejected Board of Trustees of Medshield was dismissed with costs. The court found the removal of trustees in terms of section 46 of the Medical Schemes Act 131 of 1998 is too time consuming and is not an effective alternative remedy.

Some of the myriad of material irregularities which the Trustees of Medshield were found guilty of according to the North Gauteng High Court and confirmed by the SCA were in short:

- "...the rules of the scheme were indeed disregarded and Mabeta was appointed to the BOT while he was not eligible for election. He therefore served on the BOT unlawfully from June 2008 until his re-election in 2011. Apart from the aforesaid, the BOT appointed Mabeta as the chief executive officer (CEO) of the scheme for the period September 2011 to February 2012 at a monthly salary of R99 290.00, for a three-day workweek."

- “Particularly disconcerting is the current contract with Sapling, in terms of which Sapling stands to gain R132 million over the three year life of the contract.”
- “The registrar’s directive to terminate this contract has fallen on deaf ears. The way in which the Sapling trustees have been elected to the BOT, and the fact that Sapling has undertaken to pay the trustees’ legal costs, leave scant hope that the BOT will be able objectively to deal with the Sapling contract and its consequences in an unbiased manner.”
- Illegally paying brokers “research fees” amounting to an estimated R28 million in order to incentivise them to sign up only young members to the scheme. This is unfair discrimination based on age and illegal in terms of both the Medical Schemes Act 131 of 1998 and the Constitution.
- The scheme has also been paying broker fees to unaccredited brokers illegally.

Acting SCA Judge PB Fourie whose judgment was unanimously concurred with found “...in view of the material irregularities detailed above, it is in the interest of the beneficiaries of the scheme and desirable to appoint a curator to the scheme. The registrar has also shown that he has objective grounds to believe that it is desirable to appoint a curator.”

“In my view, the grounds of concern raised by the registrar, particularly when viewed cumulatively, constitute material irregularities which have to be addressed urgently, to avoid possible prejudice to the members of the scheme. The evidence paints an alarming picture of contracts being concluded which do not appear to add value to the scheme, but rather benefit third parties.”

Mr Daniel Lehutjo, Acting Chief Executive & Registrar, says, the curator of the scheme, Mr Tebogo Phaleng has almost completed his work. “Within the next few months the CMS will approach the court to lift the curatorship order and allow the scheme to appoint a new board of trustees.”

### **Assurance to beneficiaries**

Medshield members and the general public should take note that the scheme remains financially sound and sustainable in the long run. Its claims-paying ability remains unaffected by the continued curatorship.

The regulatory intervention was necessitated by governance challenges facing the scheme, and has nothing to do with the financial stability of the scheme.

The SCA judgment confirms this: “I should also add that it is common cause that the scheme has at all relevant times been, and still is, in a sound financial condition.”

### **Advice to brokers**

Brokers are advised to act with restraint. Any advice they give must be based on a proper assessment of the situation and accord with the principles of best advice. The best interests of their clients must be borne at heart at all times.

As financial advisors, brokers are also reminded of the Financial Services Board (FSB) legislation which clearly stipulates that consumers are entitled to best – meaning independent – advice at all times.

The judgement can be found under *Barnard & others v The Registrar of Medical Schemes (628/13) [2014] ZASCA 111 (16 September 2014) Case No: 628/13.*

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