



PRESS RELEASE

Reference : Regulator fights poor governance at Liberty Medical Scheme
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Press release 3 of 2013: Regulator fights poor governance at Liberty Medical Scheme

The Chairperson of Liberty Medical Scheme has failed in his efforts to prevent the regulator of medical schemes from proceeding with an enquiry into his fitness and propriety to hold the office of trustee.

Mr Daniel Pienaar approached the North Gauteng High Court in Pretoria in March 2012 to try and stop the Council for Medical Schemes (CMS) from continuing with its investigation into allegations of not being fit and proper to manage the affairs of the scheme.

The court dismissed Mr Pienaar's interdict application on 15 January 2013 with costs. The court also rejected his numerous and serious allegations against the CMS.

Mr Pienaar has indicated that he intends to appeal the judgement. He has been opposing the proceedings against him since they were first instituted in December 2010. All the while the scheme continues to foot the legal bills.

Mr Pienaar is being investigated for his conduct subsequent to an alleged attempt by a third party to blackmail the former CEO of Liberty Health Holdings into setting up a marketing company in which he (Mr Pienaar) and the former Chairperson of the scheme, Mr Larry Jacques, would have shares.

Mr Jacques resigned in June 2011, before the CMS made a final finding on his fitness and propriety which could have seen him being removed from the Board of Trustees.

Liberty Health Holdings are the owners of V-Medical Administrators (Pty) (Ltd), or V-Med, which administers Liberty Medical Scheme.

"It is not just our will to take action where poor governance is alleged; it is our duty," said Dr Monwabisi Gantsho, Chief Executive of the CMS and Registrar of Medical Schemes. "As regulator and ombudsman we have the responsibility to look after the best interests of medical schemes and their beneficiaries, and we would be remiss in executing our mandate if we allowed serious allegations to go unaddressed. One of the remedies available to us to address governance concerns in a medical scheme is to remove trustees from office where they are found guilty of wrongdoing."

The CMS is the regulator of the medical schemes industry, responsible for enforcing compliance with the Medical Schemes Act 131 of 1998 to ensure that the interests of beneficiaries are prioritised at all times.

Liberty Medical Scheme had close to 150 000 beneficiaries at the end of 2011, and a solvency (reserves expressed as a percentage of contributions) of 27.9% – which is well above the 25.0% required by law. It remains financially stable and able to honour its claims-paying responsibility.

The judgment is available from the court (case number 7878/2010) and can also be downloaded from the website of the CMS (<http://www.medicalschemes.com/files/Judgements%20on%20Appeals/DPvsCMS2013.pdf>).

The Medical Schemes Act is clear: the CMS has the duty to always protect the interests of beneficiaries. The Act is equally clear on governance: the trustees of medical schemes must always take all reasonable steps to ensure that the interests of beneficiaries are protected at all times.

The High Court found that an analysis of the facts made in support of the complaints against Mr Pienaar clearly shows that the CMS not only had the right but in fact an obligation to confront him with the allegations against him. The court determined that the allegations against Mr Pienaar were such that the CMS could not ignore them and was in fact obliged to invoke proceedings to determine his fitness and propriety to hold the office of trustee.

The court also rejected the allegations that had been made by Mr Pienaar, including that the CMS was biased, pursuing an ulterior motive, and acting in bad faith.

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