



## PRESS RELEASE

Reference : Medical scheme Medshield's curator stays on; trustees to pay R1 million  
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### **Press release 4 of 2013: Medical scheme Medshield's curator stays on; trustees to pay R1 million**

The trustees of Medshield have been ordered to pay legal fees estimated at R1 million out of their own pockets for failing in their duty to protect the best interests of the medical scheme's 200 000 beneficiaries and entering into illegal contracts with service providers which have been described as "not inconsiderable wasteful expenditure".

The historic judgement was handed down by the North Gauteng High Court in Pretoria on 25 January 2013.

The court handed down the punitive order "as a mark of the court's disdain for the obstructive conduct of the trustees" while the Council for Medical Schemes (CMS), regulator of the industry, was trying to investigate allegations of poor governance at the scheme.

The trustees have been found guilty of 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.

They have also been paying broker fees to unaccredited brokers illegally.

The CMS, which is responsible for accrediting healthcare brokers, intends to investigate the accreditation of those implicated.

The court also found the trustees of Medshield to be "conflicted" in that they allowed a service provider, Sapling Trade and Invest 41 (Pty) Ltd, to fund their opposition to the regulator's application for a curatorship. Sapling has a contract with the scheme worth an estimated R135 million over the three years ending in 2014. The curator has instructed the scheme to terminate the contract as the services being offered by Sapling can be offered more cost-effectively by the scheme itself, its administrator, and/or brokers.

Medshield has persistently refused to comply with directives from the CMS ordering it to terminate questionable contracts and recover all illegal payments.

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.

“This is one more example of the regulator’s unwavering commitment to ensure the protection of members and the public interest in the healthcare insurance environment,” said Dr Monwabisi Gantsho, Chief Executive of the CMS and Registrar of Medical Schemes, upon receiving the judgement. “Poor governance practices in the medical aid industry cannot be tolerated. I wish to urge all the regulated entities – medical schemes, administrators, managed care organisations, and healthcare brokers – to comply fully with the Medical Schemes Act.”

### **Curatorship confirmed**

The court also confirmed that the provisional curator, Mr Themba Langa, will stay on and continue to manage the affairs of the scheme until a new Board of Trustees is elected at a special general meeting. This must happen within one year of the judgement.

Mr Langa was appointed provisional curator in October 2012 following an independent inspection into the scheme which uncovered serious irregularities in its governance. That same month he furnished the CMS with a report in which he raised further concerns about the governance of the scheme.

The curator’s report pointed out that the election of trustees at the last annual general meeting in August 2012 was highly irregular in that four employees of Sapling used invalid proxies to elect five trustees with interests in Sapling, effectively taking control of the Board to protect their own interests to the detriment of the scheme and its beneficiaries.

The CMS applied for the provisional curatorship in September 2012 after it realised that the Board of Trustees was signing contracts with third parties which were not serving the best interests of the beneficiaries of the scheme.

A curatorship effectively removes a Board of Trustees from office.

Mr Langa is an experienced attorney and, according to the judgement, “a person of ability, competence, insight, and sound judgement, [...] fit and proper” to serve as a curator of a medical scheme.

### **Political interference with independent regulator “disconcerting”**

In the judgement, the court criticises attempts by a politician to prevent the CMS from exercising its regulatory mandate after being prompted to do so by the scheme.

The Chairperson of Medshield’s Board, Mr Thabo P. Mabeta, asked the Chairperson of the Health Portfolio Committee of Parliament, to try and intervene when the CMS was proceeding with an inspection into alleged irregularities by the trustees of the scheme.

The attempted interventions were widely covered in the press at the time, and described as political interference in the affairs of an independent regulator. The court calls the attempted interventions “naive” and “misplaced”.

The CMS refused to compromise its independence and continued to execute its mandate.

### **Assurance to beneficiaries**

Medshield is one of the largest and healthiest schemes in the country.

At the end of 2011, the scheme had over 236 000 beneficiaries and a solvency (reserves expressed as a percentage of contributions) of 36.6% – well above the 25.0% required by the Medical Schemes Act.

Medshield thus 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 court judgement confirms this: “Even though the [s]cheme is financially sound[,] that alone will not avert the appointment of a curator where in the governance of the [s]cheme there has been non-observance of the principle of utmost good faith, improper conflicts of interest[,] and a concomitant subordination of the interests of the beneficiaries to those of outside persons, in particular service providers.”

### **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.

### **Where to find the judgement**

The judgment is available from the court (case number 56193/12) and can also be downloaded from the CMS’s website (<http://www.medicalschemes.com/files/Judgements%20on%20Appeals/RegvsMed20130128%20.pdf>).

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.

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