

**THE MEDICAL SCHEMES APPEAL BOARD ESTABLISHED IN TERMS OF  
SECTION 50 OF THE MEDICAL SCHEMES ACT 131 OF 1998**

In the matter between

O	<b>Appellant</b>
and	
<b>THE COUNCIL FOR MEDICAL SCHEMES</b>	<b>Respondent</b>

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**DECISION OF THE APPEAL BOARD**

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1. This is an appeal in terms of Section 50 of Medical Schemes Act No. 131 of 1998 ("the Act") against a decision by the Council for Medical Schemes ("the Council") to remove the Appellant as a member of the board of trustees of Bonitas Medical Fund ("Bonitas"). The decision made by the Council on 29 May 2009 was made pursuant to the powers granted to it under Section 46(1) of the Act which reads –

"The Council may, by notice in writing, remove from office a member of the board of trustees of a medical scheme if it has sufficient reason to believe that the person concerned is not a fit and proper person to hold the office concerned".

2. After a very full and lengthy enquiry into the relationship between the Appellant and Pharmacy Direct (Pty) Ltd by the board of trustees of Bonitas, following upon a request by the Registrar of Medical Schemes, certain facts, some of which are listed below, were established.
- 2.1 Pharmacy Direct (Pty) Ltd has an exclusive contract with Bonitas as its supplier of delivered chronic medication and had such relationship in 2006;
- 2.2 Messrs Buuren, Rensburg and Britz indirectly own 74% of the total issued share capital of Pharmacy Direct (Pty) Ltd

through their shareholding in WAD Capital Investments which owns the aforesaid shares in Pharmacy Direct (Pty) Ltd.

- 2.3 The Appellant, who was elected to the board of trustees of Bonitas in 2006, had a business relationship with both Mr Britz and Mr Van Rensburg in a business known as Introdeals and was in receipt of an ongoing income from such business at the time he joined the board of trustees of Bonitas.
- 2.4 The Appellant's relationship with both Britz and Van Rensburg was such that he accompanied them on a business trip to the United State of America in April 2007. This trip took place some two weeks prior to Bonitas' concluding a written contract with Pharmacy Direct and was initially financed by Pharmacy Direct, who was later reimbursed by Introdeals.
- 2.5 The Appellant failed to disclose either to the Council or the board of trustees of Bonitas his business relationship with Britz and Van Rensburg.
- 2.6 On 14 June 2008, the Appellant verbally disclosed to the board of trustee of Bonitas his relationship with Britz and Van Rensburg.
- 2.7 At all relevant times the Appellant knew of the relationship between Bonitas and Pharmacy Direct as well as the fact that both Britz and Van Rensburg were financially interested in Pharmacy Direct.
3. The Appellant after all these facts became known accepted that he had not made a full and proper disclosure prior to 14 June 2008 and proposed to the board of trustees of Bonitas that he resign as Chairperson of the board of trustees of Bonitas and recuse himself from participating in any future discussions of the Board involving Pharmacy Direct.
4. On 22 October 2008, the board of trustees of Bonitas made the following decision with regard to the Appellant

" Mr O be required to step down as Chairperson of the BOT and that he further be recused from all deliberations concerning

Pharmacy Direct, its officers, shareholders and directors where the BOT is required to make any decisions concerning the business of Bonitas.”

5. The Council was not satisfied with the decision made by the board of trustees of Bonitas and resolved to take steps in terms of Section 46(1) of the Act to remove the Appellant as a member of the board of trustees of Bonitas. After giving due consideration to the Appellant's comments in terms of Section 46(2) of the Act, the Council on 8 June 2009 gave the Appellant written notice that it had resolved at a meeting on 29 May 2009 to remove him as a member of the board of trustees of Bonitas. It is against this decision that the Appellant now appeals.
6. It was submitted on behalf of the Appellant that his failure to make disclosure was an oversight and had been cured by the suggestion made by him to the board of trustees of Bonitas and which they accepted. This same argument had been made for the Council who had considered and rejected it and who were of the view that the Appellant's past behaviour renders him unfit to remain on the board of trustees of Bonitas. We agree with this view.
7. The Council is entitled to act in terms of Section 46(1) of the Act if it has “sufficient reason to believe that the person concerned is not a fit and proper person to hold the office concerned”. This section gives the Council a wide discretion subject to the caveat that it has to have before it reliable evidence as to the suitability or otherwise of the person concerned to hold the office contract.
8. In our view, a trustee who accepts an office of trust and fails to disclose his business relationship with a major supplier to the medical scheme of which he is to become a trustee by such very Act discloses a lack of judgment, or maybe honesty, as to render him unfit to be a trustee of such scheme. What concerned the Council, correctly in our view, was Appellant's past behaviour which gave them “sufficient reason” to regard him as not being a fit and proper person to hold the office of trustee of this particular scheme. Even though the Appellant has agreed to recuse himself from all discussions relating to Pharmacy Direct, his relationship with its major shareholders will continue to exist and may create the perception that he is in a position to influence decisions of the BOT or to pass on information to Pharmacy Direct which may give them a preferential edge against

other would be suppliers to Bonitas. Whether or not he would so act is irrelevant as long as the possibility exists that he could so act.

9. We are accordingly of the view that the Council acted correctly in this matter and that no good reason exists as to why we should interfere with the decision taken by the Council.

10. We make the following order:

The appeal is dismissed and the decision made by the Council for Medical Schemes on the 29<sup>th</sup> May 2009 is confirmed

SIGNED this 20th day of May 2010

  
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L. I. GOLDBLATT  
Chairperson

  
for SELBY BAQWA S.C.  
Member of the Board

  
for D TERBLANCHE  
Member of the Board