

PRESS RELEASE:

**TWENTY ONE MEDICAL PROFESSIONAL ASSOCIATIONS TAKE THE
DEPARTMENT OF HEALTH TO COURT**

On Monday 22 February 2010, twenty one medical professional associations¹ will be in the North Gauteng High Court for three days arguing that the Director-General of Health has not lawfully determined the Reference Price List ("**the RPL**") for 2009.

The RPL is a list of fees for medical professionals which, in effect, determine the rate at which medical schemes reimburse either practitioners or patients. It therefore directly affects the amount which privately insured patients will be able to recoup for the cost of health services from their medical schemes. Currently, medical schemes do not have a lawful RPL to refer to when determining their members' benefits as the Director-General of Health ("**the Director-General**") has been prevented, by way of an agreed court order, from determining a 2010 RPL until 28 February 2010.

The medical professional associations, in their court papers, argue that:

- the Director-General failed to comply with his own RPL Regulations ("**the Regulations**") and Guidelines in a number of respects and has therefore acted unlawfully. For example, the Regulations required the Director-General to verify costing submissions which were made by stakeholders before he published the draft and 2009 RPL in October 2008. This he did not do; thus depriving himself of an opportunity to engage with the stakeholders in relation to their submissions. Additionally, the Director-General failed to take into account the views of the RPL Advisory Committee (a committee which the Minister of Health established to advise on the determination of the 2009 RPL);
- the Director-General acted in a manner which was procedurally unfair. He did not give many of the applicants a reasonable opportunity to comment on the

¹ South African Private Practitioners Forum; South African Heart Association; Ophthalmological Society of South Africa; South African Orthopaedic Association; South African Rheumatism and Arthritis Association; The Association of Plastic and Reconstructive Surgeons of South Africa; The South African Gastroenterology Society; The Faculty of Consulting Physicians; The Gynaecological Management Group Limited; The South African Urological Association; The South African Society of Otorhinolaryngology Head and Neck Surgery; The South African Association of Audiologists; The South African Speech Language and Hearing Association; Surgicom Limited; The Society of Neurosurgeons of South Africa; The South African society of Physiotherapy; The South African Podiatry Association; South African society of Psychiatrists; The Dermatological Society of South Africa; General Practitioners Management Group; Paediatric Management Group Limited.

reasons for rejecting their costing submissions. Also, these applicants were not given proper or timeous reasons for his rejection of their submissions;

- the Director-General erred in that he rejected or ignored the costing submissions (i.e. the detailed costing data submitted on behalf of the medical industry, which were aimed at establishing the true costs of providing healthcare services);
- the Director-General failed to determine a cost-based RPL. He failed to correct historical defects in the RPL and failed to take the factors listed in the Regulations into account when determining the RPL. This has resulted in the 2009 RPL being set at an inappropriately low level that barely covers practitioners' professional fees and therefore results in a dramatic under-recovery of the costs involved in providing private health care services;
- the Director-General acted irrationally and unreasonably in failing to properly consider various proposed changes to the coding of the RPL (i.e. changes to the manner in which various services are described in the RPL);
- the Director-General drew irrational and unreasonable distinctions between groups of practitioners when determining the 2009 RPL. For example, specialists are reimbursed at a lower rate for consultations than general practitioners. This is irrational for a range of reasons, including the reality that the professional remuneration of a specialist is higher than a general practitioner.

The case is being argued before Judge Ebersohn, from 22 to 24 February 2010, in the North Gauteng High Court.