

Doctors hit by malpractice claims surge

EXPERTS say South Africa is in a medical malpractice crisis and a study to investigate the reasons for the spike in litigation and medical negligence claims, announced by Health Minister Aaron Motsoaledi several months ago, has yet to begin its work. The situation has deteriorated rapidly over the past five years, in frequency and value, according to the Medical Protection Society (MPS), SA's leading indemnifier of healthcare professionals, which covers about 30 000 health professionals. Its head of medical services, Dr Graham Howarth, revealed that they had seen a rise in multimillion-rand clinical negligence claims over the period, many of which related to birth injury cases. He added that neonatology, neurosurgery and spinal surgery were other areas where there had been large claims costs. The situation prompted Howarth to warn of concerns that the increasing costs, particularly compensation levels awarded in catastrophic injury claims, were posing a threat to private practice in specialities such as obstetrics, "where medical mishap can give rise to such severe injuries". He said he knew of some doctors in "high-risk specialities" who were beginning to question whether it was viable to continue in private practice. The impact this rise in medical litigation in SA is having on the sustainability of the health system has spurred the medical fraternity to investigate measures to mitigate a potential disaster.

Howarth said MPS had raised its concerns about the soaring cost of claims in both private and public practice, as this was not just a challenge for Medical Protection Society, but for the wider healthcare system. He said the society would continue to work with the government and health stakeholders to explore options to address the current clinical negligence environment. The SA Health Professions Council has also expressed concern at the reported high incidence of medical litigation, and the knock-on effect on practitioners, patients, and the entire healthcare industry. HPCSA chief executive and registrar, Dr Buyiswa MjambaMatshoba, said the council's primary role was to guide healthcare practitioners, and in doing so, also protect the public. He said the HPCSA had a critical role to advise the Minister of Health on issues pertaining to health and, consequently, the HPCSA was involved in a pilot project initiated with the Gauteng department of health geared towards managing and mitigating high incidences of medical litigation in the province. National Health Department spokesman Joe Maila said the department was researching the matter, and an investigative team would soon start work on probing the reasons behind the spike in medical negligence claims. The department was working to get everyone in the sector to do their part, to ensure a reduction in the impact of medical litigation on the medical profession, and the health system as a whole. Maila said Motsoaledi was very concerned about the possible medical malpractice crisis, saying it had the potential to result in a loss of confidence in the public medical sector. Whatever the number and amounts claimed, "we remain concerned as we believe one claim is one too many". They expect the investigation to identify the reasons for the increase in medical litigation, as well as recommend remedial action.

According to Howarth, issues driving the rise are multifactorial. He said a key issue was the cost of claims and the increased size of awards. The costs in obstetric (and neonatal cases) tended to be large because the injury

was to a young child, who might have a long life expectancy as well as serious disabilities. This, he said, combined with the costs associated with technological advances, had led to an escalation in the cost of care, and consequently financial awards in negligence cases. Other contributing factors included increased advertising by lawyers, and the financial limits placed on the Road Accident Fund, which forced lawyers to seek other types of personal injury cases. Howarth said MPS believed that excessive and exorbitant legal costs, particularly by no-win, no-fee claimant lawyers, had been a key factor in pushing up claims costs. He said the rise in claims generally had stemmed from the exodus of attorneys who specialised in RAF claims into the medical negligence arena. Driving the shift was an amendment to the RAF Act in 2008, removing rights of individuals injured in a road accident to sue those responsible. The caps on damages placed on RAF claims was another factor.

Warda Meyer: The Saturday Argus, 6 October 2012