

SASOG Medico-legal Committee

Available indemnity insurance options to Obstetricians and Gynaecologists in South Africa

Introduction

The cost of medico-legal insurance has become a huge challenge and many SASOG members simply cannot afford the cover they used to have. This has resulted in many SASOG members not providing obstetric services anymore, to the detriment of society at large and women in particular in South Africa. It is not the intention of this document to address the underlying issues that have contributed to the current medico-legal crisis.

Over the last two to three decades, many role players providing indemnity cover has entered the South African market at premiums undercutting that of the MPS, who has been, and currently still is, the largest indemnity cover provider in South Africa for the past 60 odd years. Historically, none of these alternative role players had been sustainable options, and as a result, MPS has been the sole provider of indemnity cover to doctors in South Africa and to SASOG members for a very long time, resulting in a monopoly. Being the sole provider of a service in a market without competition is not an ideal setting, neither for the medical profession nor for the MPS, who have in this process attracted a lot of criticisms and have been seen by many SASOG members as being part of the problem of unaffordable indemnity cover.

The indemnity cover provider landscape has changed quite significantly in recent times, with some new entries in the indemnity insurance market in South Africa. EthiQal, the medico-legal indemnity insurance arm of Constantia Insurance Ltd, entered the market in 2017, and PPS, who is the most recent entry into this market launched their product on 15 February 2019.

Overview of the available options

SASOG has engaged in the last few months with all these role players and we are fortunate to have been able to establish sound professional relationships with MPS, EthiQal, PPS and Natmed.

The SASOG Medico-legal committee has provided a detailed document describing the business models, philosophies and entities under which the three companies function, and SASOG members are referred to this document on the SASOG website for more information. In essence, MPS and PPS function as mutual organisations. MPS has no profit motive and surplus funds (if any) are invested back into the member fund and used to meet the needs of members. In the PPS model, surplus funds (if any) are allocated to members through the existing models. MPS is a discretionary provider registered in the UK and not regulated by South African financial services sector regulators and regulations. PPS and EthiQal are registered in South Africa and provide insurance products regulated by financial services sector regulators and regulations.

Calculation of subscription premiums

The main difference between EthiQal and MPS (and PPS to some extent) in as far as premiums are calculated, relates to the underlying philosophy used to calculate future risk and the cost thereof. Both MPS and PPS use actuarial calculations based on claims frequency and the projected quantities of claims to enable them to hopefully have enough funds to cover current and future claims that might arise. EthiQal has a different model. Mr Volker von Widdern explained to SASOG that EthiQal has calculated that in most instances it will not be necessary to settle “the R40 million claim”, and their strategy will be to engage with litigation lawyers, professional societies, and other stake holders, including the option of mediation and becoming involved in efforts to care for children with cerebral palsy, in an effort to avoid settling these large claims. This philosophy or strategy, which has not been validated elsewhere, is what is allowing EthiQal at this stage to have premiums much cheaper than the other two providers.

SASOG also met with Natmed, who is essentially a broker and not an indemnity insurance provider in the same sense as the other three companies. Natmed in essence underwrites the EthiQal product.

Expert Opinion Panel

Both MPS and EthiQal have signed memorandums of understanding with the SASOG expert opinion panel (EOP), and although not binding, they appear willing to use and promote alternative dispute resolution of complaints as the initial port of call

in finding resolutions, basically in the quest to attempt to reduce litigation. According to Dr Ismail Borat of the EOP, this is definitely a step forward and only by further engaging with them can we hope to progress even further.

Other relevant matters

SASOG is engaging with indemnity insurers on amongst others, clearer guidelines with regards to reporting of incidents under claims made cover, the conditions that are relevant that will result in the termination of membership, and the sharing of data. All stakeholders have indicated their willingness to engage with SASOG on these issues, and members will be informed regarding developments in this regard. SASOG is available to assist members where required in the process where termination of membership is at stake.

Disclaimer

SASOG is an organisation looking after the interests of its members in the interest of women's health in South Africa. The purpose of this document is to provide SASOG members with information regarding the options available for indemnity cover in South Africa. SASOG does not endorse any one service provider over the other and cannot provide advice to members regarding their choice in this regard. Members are urged to thoroughly investigate the available options before any decisions are taken in this regard.

Correspondence medico-legal matters

SASOG medico-legal committee is available to engage with the above providers on behalf of members should the need arise. Members are also invited to contact the committee with any medico-legal related matters. Correspondence can be send to the Chair of the SASOG Medico-legal Committee, Prof L C Snyman at leon.snyman@up.ac.za or leon.snyman@mweb.co.za, or to Alison Shaw at the SASOG secretariat at alison@royalh.co.za

On behalf of the SASOG Medico-legal committee

Prof Leon Snyman (Chair)

Prof Bash Goolab (bgoolab@iafrica.com)

Dr Conrad Mashiloane (cmash@mweb.co.za)

Dr Haynes van der Merwe (haynes@sun.ac.za)

Dr Ismail Borat (bhorat@worldonline.co.za)