

**ROAD ACCIDENT FUND CLAIMS AND THE STATUTORY
OBLIGATIONS ON MEDICAL AID SCHEMES ACT NO. 131 OF 1998**

1. :

1.1. Members of Medical Schemes who are involved in motor vehicle accidents are sometimes approached by their Medical Schemes and/or the Medical Schemes' collection agents. Members are requested to sign Undertakings to reimburse Medical Schemes, any amounts recovered from the Road Accident Fund in respect of medical costs, and which may have been paid by the Medical Scheme concerned previously.

1.2. Similarly, Attorneys representing such victims are routinely called upon by Medical Schemes to furnish Practice Undertakings to reimburse the Medical Schemes, the relevant medical costs recovered out of the proceeds of the claim.

2. Attorneys are regularly called upon by their clients to advise them on this issue and in particular whether :

2.1. the client is obliged to sign an Undertaking to reimburse the Medical Scheme;

2.2. the Medical Scheme is entitled to terminate benefits if the member and/or the member's Attorneys refuses to sign the Undertaking;

2.3. Prescribed Minimum Benefit care, usually involving emergency care, may lawfully be withheld by the Medical Scheme, should the member and/or the member's Attorney refuse to sign the Undertaking;

2.4. the client is obliged to litigate as opposed to simply lodging a claim with the RAF;

2.5. the client is obliged to carry the risk and cost of the litigation, or whether the Medical Scheme should not be required to undertake in advance to bear a pro rata portion of the fees and disbursements incurred in the litigation from which it seeks to benefit;

2.6. the Medical Scheme should not indemnify the member against any adverse costs order which might arise in an unsuccessful claim.

3. The relationship between a Medical Aid Scheme and its members is partly contractual, usually involving the completion of a membership application form containing certain conditions, and partly statutory being significantly impacted on and regulated by the Medical Schemes Act No. 131 of 1998 and the Regulations thereto. (The Act and Regulations are attached hereto). *

3.1. Attorneys in advising their clients of their rights and obligations would need to obtain copies of all relevant documents applicable to the client's relationship with the Medical Scheme in accordance with the provisions of the Medical Schemes Act No. 131 of 1998.

4. The relevant Sections of the Act and Regulations include the following:

4.1.1. In terms of Regulation 28 (1) (d) a Broker must enter into a prior written agreement with the Medical Scheme concerned and must disclose in terms of Section 28 (1) (e) to the prospective member the fact that he/she is acting in terms of an agreement with the Medical Scheme concerned.

4.1.2. Section 28 (1) (h) requires the Broker to "provide best advice and act at all times in **good faith** towards the member, the prospective member and the Medical Scheme concerned. The term good faith would require upfront disclosure of exclusions or conditions attaching to the right to receive medical care in specified circumstances. E.g. that road accident generated medical costs are subject to such exclusions or conditions.

5. Section 30 (2) (a) of the Act requires that *"Notwithstanding the provisions of section 41(1) and (2), a medical scheme shall provide free of charge to every member of that medical scheme on admission with a detailed summary of the rules specifying such member's rights and obligation"*.

6. Section 29 (1) (L) requires the Scheme requires a Schemes' Rules to provide for:

"The giving of advance written notice to members of any change in contributions, membership fees or subscriptions and benefits or any other condition affecting their membership".

7. Section 57 (4) (d) of the Act requires the Board of Trustees of a Scheme to *"ensure that adequate and appropriate information is communicated to the members regarding their rights, benefits, contributions and duties in terms of the rules of the medical scheme"*.

8. Two Medical Aid Schemes have apparently taken the view that all that is required of a Medical Aid to bind a member to its Rules is lodgment of their Rules with the Registrar of Medical Schemes in terms of **Section 32 of the Act**, which provides that -

"The Rules of a medical scheme and any amendment thereof shall be binding on the medical scheme concerned, its members, officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming."

This contention is made in circumstances where neither a detailed summary of such Rules as is required in terms of Section 30 (2) nor the Rules themselves had ever previously been furnished to the member.

9. A Medical Scheme has contended in the context of requiring its members to litigate at the members own cost and risk against the Road Accident Fund, that should such member seek to deduct a pro rata amount in respect of the costs of the litigation of the amount claimed to be due to the Scheme by virtue of its Rules that this may amount to *"a failure to repay a debt within the meaning of Section 29(2)(b) of the Medical Schemes Act No. 131 of 1998 ("the Act") and may entitle a Scheme to reclaim what it has paid to or on behalf of such members and/or to terminate membership."*

9.1 A prudent Attorneys advising a client with respect to a threatened termination of membership on the grounds set out above, would need to consider all the aforesaid provisions of the Act. This would include the issue of whether a Medical Scheme member could be lawfully held to Rules, conditions and exclusions of

which the member was not informed consequent upon failure by the Scheme to observe the peremptory provisions of the Act aforesaid.

- 9.2 Further and on the assumption that a Scheme member is bound to unseen Rules, whether such member having litigated at his or her own cost or risk is not entitled to a pro rata contribution towards the costs of such litigation.
10. Prescribed Minimum Benefits – Section 29 (1) (o) compels a Medical Scheme to stipulate in its Rules *"the scope and level of minimum benefits that are to be available to members and dependents as maybe prescribed"*.
- 10.1 Regulation 10 to the Act states that: *"Every Medical Scheme must make provision in its rules for the reimbursement of the cost of care that is considered to fall within the Prescribed Minimum Benefits prescribed under these Regulations within all the membership options that the Medical Scheme offers."*
- 10.2 Annexure "A" to the Regulations sets out the Prescribed Minimum Benefits and includes the full range of treatments that would be required following on trauma and injury sustained in a road accident.
- 10.3 A prudent Attorney in considering whether a Medical Scheme could make the provision of Prescribed Minimum Benefit care subject to an undertaking, by its member to litigate against the Road Accident Fund and reimburse the Medical Scheme relevant medical costs recovered, would need to study the Act and the various Sections and Regulations referred to.
11. Penalties flowing from non-compliance with the Act may be found in Section 66 (1) of the Act which provides –
- a. *"Section 66 (1) Offences and Penalties – (1) Any person who –*
- (a) *Contravenes any provision of this Act or fails to comply therewith;*
- (f) *shall, subject to the provisions of sub-section (2), be guilty of an offence,*
- and liable on conviction to a fine or to imprisonment for a period not exceeding five years or both a fine and imprisonment."*
- 11.1 A prudent Attorney in advising a client concerning any of the matters referred to above and in considering the extent, if any, to which the Scheme, its Principal Officer or members of the Board of Trustees have failed to carry out any statutory or peremptory duties, would need to carefully study Section 66 so as to advise their client as to whether good cause exists for the laying of a criminal charge in terms of Section 66 (1) of the Act.

12. COMPLAINTS

Section 47 of the Act makes provision for the making and receiving of complaints with respect to any matter provided for in the Act and Section 61 empowers the Registrar to declare a particular business practice by a Medical Scheme an "undesirable business practice".

- 12.1 Attorneys in advising their clients with regard to all the aforesaid matters should have regard to Sections 47 and 61.