



30 November 2023

Dear Healthcare Providers

FINANCIAL ASSISTANCE: CONSTITUTIONAL CHALLENGE IN THE HIGH COURT - NAMAF

During 2018 the NPPF obtained a legal opinion from Senior Counsel which concluded, in essence, that **NAMAF does not have the powers to set benchmark tariffs, and that the clause in the Medical Aid Funds Act which seemingly gives NAMAF unlimited powers to do what it likes, is unconstitutional.**

We provided the opinion to NAMAF in 2018, and it was disregarded. NAMAF continued with this practice, not only to set benchmark tariffs, but also to encroach on the regulation of, and set rules applicable to healthcare providers. In some instances NAMAF completely usurped the powers of the actual statutory regulators of healthcare providers and healthcare facilities.

It is clear that NAMAF will not desist from its agenda to regulate and prescribe to the private healthcare providers until ordered by the High Court to do so.

Unfortunately the NPPF was never able to raise sufficient funds to initiate legal proceedings to challenge NAMAF and the constitutionality of its empowering laws.

We now have the pleasure of assisting a member of the NPPF, Dr Joffe of Olympia Eye Institute Private Hospital (the “applicant”), in **pursuing such a constitutional challenge.**

Kindly find attached the Notice of Motion filed in this matter.

The applicant applied to the High Court for, inter alia:

1. The following portion of the law to be declared unconstitutional: “*and may generally do anything that is conducive to the achievement of its objects and the exercise of its powers, whether or not it relates to any matter expressly mentioned in this section*”.

In layman’s terms: It is essentially under this section that NAMAF claims to set benchmark tariffs, and do many other things that are otherwise unlawful, outside of its powers, unfair, and unreasonable. The NPPF received countless complaints about NAMAF over the years. Most issues affect the whole private healthcare industry. Many issues affect individual providers, and each have a different story to tell about the injustice of NAMAF’s decisions and actions. They almost all stem from NAMAF’s interpretation of this clause – that it can do whatever it wants.

2. That Regulation 5(2) be declared unconstitutional.

In layman’s terms: This regulation allows for NAMAF to set “requirements” for practice numbers. NAMAF also imposes a system on the funds whereby a healthcare provider may not claim directly from a fund, on behalf of his/her patient, without a practice number. NAMAF used this section to expand its control over healthcare providers, to the extent that it has become the *de facto* regulator (and punisher) of healthcare providers. The recently mooted “opt-in / opt-out” model which NAMAF intends to impose soon, is a further example of the lengths NAMAF will go to, to control healthcare professionals and their healthcare facilities. In that model, if you “opt in”, you subject yourself to NAMAF’s regulation, agree to charge only its unilaterally set tariffs, and waive any rights you may otherwise have against the funds. If you don’t “opt in” your patients will be entitled to a lesser benefit from their funds. The draconian methodology (in fact blackmail, for you must now sacrifice your own rights for the benefit of your patients) is clear, and is perpetuated through this regulation 5(2).

The NPPF is the only association that has actively fought NAMAF’s abuse of public power over the past 12 years. But the NPPF could never pursue such fight to finality – in a court of law. All other avenues failed, **and an application to court remains the only available option.**

We hereby request the private healthcare industry to support this application, for it will now doubt be a very expensive exercise the burden of which one of our members (and his partners) must now carry, for the benefit of the whole private sector healthcare industry.

We thus kindly request you to contribute to the legal expenses in this matter. Any contribution is appreciated. Contributions are made directly to the trust account of the instructing attorney in this case, Mr Joos Agenbach. There are two instructed counsels and Adv Totemeyer is the senior counsel. Adv Totemeyer also provided the above-mentioned opinion to the NPPF in 2018.

For our records, the attorney will inform the NPPF of all contributions received.

This is your opportunity to make a difference, and to support the change you have been longing for.

Kindly pay contributions to:

Beneficiary Name: JOOS AGENBACH TRUST ACCOUNT SEC 26(1)
Bank: First National Bank
Branch: Windhoek Corporate
Branch Number: 281872
Account Number: 62271113484

Kindly use the reference: “**OEIPH [and your initials and surname – or practice name]**”

Kindly further email a proof of payment to: joos@agenbach.com and to minet@agenbach.com

We attach hereto a bank confirmation letter of Mr Agenbach’s trust account for your peace of mind.

We thank you in advance for your support of this important case.

Yours faithfully

Dr Dries Coetzee
CEO - NPPF