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**Members: Eben de Klerk  
Carla de Klerk**

PO Box 11618, Klein Windhoek  
Windhoek, Namibia  
Cel.: +264 (0)811222181  
Phone: (+264)(61) 308004  
Fax: (+264) 088 620 356  
[eben@isgnamibia.com](mailto:eben@isgnamibia.com)  
[www.isgnamibia.com](http://www.isgnamibia.com)

**The Honourable Minister**  
Honourable Calle Schlettwein  
**Ministry of Finance**  
By Hand

Dear Honourable Minister

### **PROPOSED PSEMAS CONTRACT: SUBMISSIONS BY THE NPPF**

We act on behalf of the Namibian Private Practitioners Forum (NPPF), a section 21 non-profit company representing over 300 healthcare professional of all healthcare disciplines (except pharmacies).

We refer to the opportunity you recently provided to healthcare service providers to make submissions on the proposed renewal of the PSEMAS contact. Although the invitation was not extended to the NPPF, we nonetheless thank you for the opportunity to provide submissions herewith.

The NPPF has never been invited to consultative sessions with you, although it has a material interest in the matter. Unlike the traditional associations, the NPPF is a wider representative body, with internal capacity and expertise which the associations do not have, to better advise and assist on matters such as the proposed contract, and a wide range of other matters, including the professionalism of healthcare providers and the mitigation of risk to PSEMAS.

We pray that you will include the NPPF in the current process of negotiations, as well as future consultations on health / PSEMAS related issues.

### Direct Submissions

We were informed that submissions must be made to Mr Koos du Toit, who will be responsible for collating same and make one submission to you. The NPPF cannot follow this channel, and submissions are hereby made directly to you. We hold nothing personal against Mr Du Toit, but do recognise that he wears numerous hats in the healthcare industry, and as such may find himself in a conflicted position when assessing the NPPF submissions, for instance our submissions regarding NAMAf practice numbers and benchmark tariffs; also on the contract exonerating the administrator from liability.

### Format of submissions

We provide the NPPF's submissions through general comments contained herein, and also in the template format provided by your office. These submissions are complimentary and not duplicated.

## **SUBMISSIONS: GENERAL**

### Tariffs

The proposed new PSEMAS contract (the "contract" or "agreement") defines "Annexure B" as being the "PSEMAS tariffs". No Annexure B was provided for scrutiny. Was this contract to be signed in the absence of such tariffs, it may render the contract void *in toto*, or at least voidable, as such tariffs forms part of the *essentialia* of this service agreement.

Put differently, in the form of a practical question: "What would be a service provider's position if he/she signed the agreement in the absence of the tariffs attached, and only later he/she receives tariffs indicating that a consultation will be paid at N\$10 per 15 minute consultation?". The contract therefore places liability on the service provider to perform, without consensus on the count value for such performance.

"Tariff" is then further defined, and a tariff may include "tariffs determined by NAMAf". You are aware that the Namibia Competition Commission (NaCC) has ruled that the setting of these tariffs by NAMAf, and the utilisation thereof by funds, offend the Competition Act. NAMAf and the funds challenged the NaCC's jurisdiction over them in the High Court,



which challenge was unsuccessful. The appeal to the Supreme Court is pending.

The NPPF has been a proponent of a statutory, independent Medical Control Board to deal with matters such as tariffs. The NPPF communicated this to the MoHSS. The funding industry (NAMAF and Medical Aids) are clearly not interested to cooperate on this matter.

It is unlikely that the current continuation of setting and utilisation of NAMAF tariffs is lawful, and even if currently lawful (because of the pending appeal), it is likely that the Supreme Court will put an end to these benchmark tariffs; as is the case in South Africa since 2003.

Even if NAMAF was authorised by statute to set tariffs, which the High Court ruled is not within NAMAF's powers, the Medical Aid Funds Act, 23 of 1995 (the "Act") specifically excludes PSEMAS from the scope of that Act (section 2(a)).

To ensure legitimacy of the new PSEMAS agreement, we propose that no tariff in the renewed agreement be in any way based on NAMAF Benchmark Tariffs.

#### Registration with NAMAF: Practice number

The scope of the Act, and the regulations thereto, explicitly excludes PSEMAS. It's under these regulations, from which PSEMAS is excluded, that a healthcare provider may apply for a practice number and then only if the providers intends to claim directly from a private fund. It is inappropriate for PSEMAS to demand compliance with and Act from which PSEMAS is specifically excluded, and which compliance is not mandatory for healthcare providers who elect not to claim form private medical aid funds directly.

#### NAMAF: General

The NPPF is of the opinion that from the Act it is clear that NAMAF is a regulator of private medical aid funds. NAMAF has however, through their legal practitioners, denied in writing that it is a statutory regulator. As the mandate of NAMAF is misunderstood by itself, its continued relevance is questioned, and so also any contractual agreement attempting to rely on any oversight by NAMAF, which this contract attempts to enforce. NAMAF has no



jurisdiction over state medical aid funds, or private healthcare providers, yet this contract attempts to elevate NAMAFA to a regulatory body (of healthcare providers no less) completely outside of the scope of the applicable legislation.

To date NAMAFA refuses to justify its fees for issuing practice numbers. This besides the fact that NAMAFA's arbitrary setting of requirements, which requirements are not contained in statute, will no doubt suffer the same defeat as the Namibia Medicines Regulatory Council's defeat in the dispensing case did in the Supreme Court, and on exactly the same grounds.

#### Ministry of Health and Social Services

As will be clear from our attached additional submissions, parts of the proposed agreement indicate that the drafters (old and new) are not familiar with the functionality of the private healthcare industry. It will be of great value if the Honourable Minister of Health and Social Services may be involved in the current process. He is familiar with both private and public healthcare industries and can add tremendous valuable and independent contributions to the PSEMAS contract which can improve healthcare service delivery.

We therefor humbly request that the Honourable Minister be invited to attend the final consultations session.

Should you require further information please contact the CEO of the NPPF, Dr Dries Coetzee, at 0811289029, [drdriescoetzee@gmail.com](mailto:drdriescoetzee@gmail.com) or the writer at [eben@isgnamibia.com](mailto:eben@isgnamibia.com) or 0811222181.

Yours faithfully,

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