



18 APRIL 2018

**The Honourable Minister of Finance**

By Hand

**Cc.: The Honourable Minister of Health and Social Services**

By Hand

Dear Honourable Minister

### **LEGAL OPINION ON THE NAMIBIAN ASSOCIATION OF MEDICAL AID FUNDS (NAMAF)**

Several years ago, it was reported that you support the creation of a Medical Control Board. Since then unfortunately nothing came of it.

As you may already know, a substantial portion of the private medical fraternity has several concerns about NAMAF's activities. These concerns include:

1. NAMAF is increasingly acting as regulator of, and setting rules for private healthcare providers.
2. NAMAF is not executing its statutory mandate of regulating medical aid funds, to protect members of medical aid funds (the public).
3. NAMAF's management is constituted by representatives of the very funds it should regulate. It is structurally therefore not capable of fulfilling its statutory mandate as regulator of funds. As a matter of fact, it has in the past categorically denied that it is a regulator of medical aid funds.
4. NAMAF claims the prerogative to set benchmark tariffs for healthcare providers in the private sector. This is an overreach of its statutory powers because its statute (Act 23 of

1995) does not authorise it to that effect. It (NAMAF) relies on the 'do-anything-necessary' clause in the Act (the 'catch-all clause') which is questioned as being unconstitutional.

5. The unscientific methodology of NAMAF's setting of these tariffs and the detrimental effect thereof on private sector initiative and sustainability have been well documented.
6. Apart from setting benchmark tariffs, NAMAF continues to overreach on its statutory powers in different other ways.

We, the Namibia Private Practitioners Forum (NPPF) obtained a legal opinion from Advocate R Töttemeyer (SC), which we attach hereto, on the powers of NAMAF to set benchmark tariffs.

The opinion concludes that the powers seemingly provided in the catch-all clause is unconstitutional and that there is a reasonable prospect of success of a constitutional challenge of this clause, and NAMAF's subsequent actions based on this clause, including the setting of benchmark tariffs.

In his opinion, Adv Töttemeyer inter alia relies on the Supreme Court Judgment in the case of Medical Association of Namibia (MAN) and Another v Minister of Health and Social Services and Others (including the Namibia Medicines Regulatory Council) 2017 NR 544 (SC). In this matter judgement was given in favour of MAN, with costs, and civil claims against government for loss of income are now being prepared.

The NPPF therefore kindly requests engagement with your office to commence the process of creating a Medical Control Board, which will inter alia have the powers to set ethical tariffs, after following an inclusive and scientifically acceptable process.

It is not the desire of the NPPF to seek relief from the courts as per the advice received, but if government shows no interest in dealing with NAMAF's constitutional overreach, and put in place an alternative tariff setting body, the NPPF will be left with no alternative.

We look forward to your reply and engaging with your esteemed office to improve the Namibian private healthcare industry.

For further information kindly contact Eben de Klerk at [eben@isgnamibia.com](mailto:eben@isgnamibia.com), or 0811222181.

Yours faithfully,

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Dr. Dries Coetzee (CEO: NPPF)