31/03/2025

To:
The President of the NAMAF Management Committee (executiveassistant@namaf.org.na)
Principal Officers of Medical Aid Funds (executiveassistant@namaf.org.na)
Boards of Trustees (executiveassistant@namaf.org.na)

Dear Mr. Theron, dear Principal Officers of Medical Aid Funds, dear Board of Trustees,

RESTITUITON OF FEES AND DISTORTED PRESENTATION

1. **Frame of Reference**

We refer to our previous response dated 25 March 2025 to the NAMAF CEO, on the restitution of fees in which NPPF referred to the letter dated 4 December 2014, addressing the charging of fees for the renewal of practice numbers and reference to earlier communication.

Before proceeding, we wish to briefly pause and address paragraph 6 of **NAMAF's media release dated 26 March 2025,** which was published in ***The Namibian*** and *inter alia* aimed at discrediting the NPPF. The particular statement reads:

"Whatever means anyone wishes to deploy to ensure sustainability and integrity of healthcare funding must be carried out within the legal framework established by the Government."

Given NAMAF MC's role in the funding industry, it is imperative that NAMAF itself operates within this legal framework. To provide context, we have attached a letter sent to NAMAF on 28 February 2014, which comprehensively sets out the request regarding the basis on which renewal fees for practice numbers were levied. Additionally, we enclose a letter dated 15 March 2014 from Adv. H. Ruppel of LorentzAngula Inc., confirming receipt of the aforementioned letter and indicating that he had been instructed by NAMAF to represent them in this matter.

2. Proof of Seeking Clarification and Relief

NPPF thus formally raised concerns regarding the imposition of fees and was informed that NAMAF had secured legal representation. Despite this, NAMAF failed to provide any substantive response. NPPF subsequently followed up on the matter, but these efforts were ignored. NAMAF remained unresponsive until 2023, when the imposition of fees for 2024 were waived and NAMAF's conduct aligned with the provision of the MAF Act.

Neither NPPF nor the affected healthcare providers and facilities can be held accountable for NAMAF's failure to **confine its operations within the law** or to respond in a timely manner to the inquiries raised. Acting within its mandate, NPPF is entitled to pursue this matter on behalf of practitioners—contrary to NAMAF's views—who have a legitimate claim for reimbursement of unlawfully levied fees.

The NAMAF CEO's assertion that NPPF is lacking ***"locus standi"*** is thus both misleading and legally untenable, given the irrefutable facts on record. A statutory body that unlawfully collects payments *("**condictio indebiti**")* has no legal entitlement to retain such funds. Furthermore, prescription cannot be invoked to validate an *ultra vires* act. The principle of "***ex turpi causa non oritur action***" applies—NAMAF cannot profit from its own unlawful conduct or evade liability for restitution.

NPPF has previously communicated this principle and notes with concern that neither NAMAF, the NAMAF MC, the Funds, nor the Trustees have disclosed whose financial resources will be used to defend the retention of these unlawfully levied fees. Under the Medical Aid Funds Act (MAF Act), NAMAF's statutory role is to regulate medical aid funds—not to act as a legal representative or defender of these funds in litigation. The Act does not grant NAMAF the authority to allocate its resources for legal proceedings aimed at justifying or retaining unlawfully imposed fees.

The Association comprises all registered funds, meaning these funds were responsible to pay the fees demanded from practitioners. In light of Section 12(k), which has informed the Association since 1995 to *"**pay the expenses incurred in connection with its administration,**"* will the funds now voluntarily repay these fees to practitioners? Or will the Trustees assume personal responsibility for the recovery by funding the legal action NAMAF is inviting, given their duty to uphold the provisions of the Medical Aid Funds Act—a duty they have thus far failed to fulfil?

3. NPPF's Response to NAMAF's Allegations in the Media

For the benefit of Principal Officers and Trustees of Medical Aid Funds, NPPF wishes to briefly address selected claims made by NAMAF in its media release dated 26 March 2025. In particular, NPPF rejects NAMAF's allegations of misrepresentation, noting that each statement made by NAMAF MC in its press announcement could—and should—have been dismissed as unfounded. However, such action has been omitted for the sake of brevity alone.

a) Constitutional References to Healthcare

NAMAF MC references healthcare in its defence of its actions, yet the relevant constitutional provisions—Article 13, Article 15(2), Article 20(3), Article 95(b), and Article 95(j) of the Namibian Constitution—primarily concern the welfare of the people. These provisions affirm that neither individuals nor their health should be exploited. However, they do not extend—explicitly or implicitly—to granting NAMAF or medical aid funds any regulatory authority outside the provisions of the MAF Act.

b) The National Health Act (Act 2 of 2025)

Any reference to the National Health Act must be viewed considering Section 2, which assigns responsibility for policy frameworks—such as the implementation of disease coding—to the Minister of Health. NAMAF MC and medical aid funds have no legislative mandate under this Act to regulate such matters. The only funding-related provision in the Act pertains to the Special Fund for the Treatment of State Patients, which is intended **solely for state healthcare** support as set out under Part 8 Financial Assistance For Special Medical Treatment Of **State Patients**. No reference is made to private healthcare funding which is the topic under review.

c) NAMAF's Claim of Supporting Equity and Transparency

In paragraph 7.1 of its media release, NAMAF asserts that it has established systems "*that support equity, fairness, transparency, and sustainability.*" However, its June 2023 strategic plan for 2024–2026 directly contradicts this claim, as it primarily focuses on reducing member benefits as a cost-management strategy rather than enhancing healthcare access and affordability.

This contradiction is evident in NAMAF MC's actions, including (but not limited to):

- The reduction of previously adjusted hospital fees;
- The unilateral and restrictive interpretation of outdated NAMAF Benchmark Tariff (NBT) provisions;
- The limitation of coding options, thereby restricting accurate billing for medical services;
- Other restrictive measures that reduce benefit coverage while increasing member contributions, deterring membership growth; and
- The barring of fund members from accessing the NBT framework to validate claims submitted by healthcare providers (HCPs).

Furthermore, NAMAF's failure to draft conduct rules as required under Section 18 of the MAF Act (a prerequisite to hold a fund accountable) is compounded by administrative staff having been empowered to interfere in HCPs' clinical decisions jeopardizing patient care and safety, and further undermining NAMAF's claims of *"equity, fairness, transparency, and sustainability."*

d) NAMAF's MC Accusations Against NPPF

NAMAF's MC accuses NPPF of misrepresentation and falsification of information including allegations of plagiarism of SAMA codes. However, this accusation is contradicted by an independent 2014 assessment report on healthcare costs in Namibia, conducted by a professional consultancy. The report, identified fundamental flaws in NAMAF's Benchmark Tariff, including:

- *"It is based on an **outdated 2003 RSA BHF Tariff and Coding list**."* *Historically, tariff structures resulted from collective efforts by entities such as the Board of Healthcare Funders (BHF), the South African Medical Association (SAMA), and others. As such, the 2003 tariff and coding list incorporated or was influenced by SAMA codes under copyright, which remains in effect.)*

- *"There have been more than **1,000 code updates**, and the **consultation coding structure** changed more than **10 years ago**."*
- *"**NAMAF** has **no approval to use this coding structure** as it is **subject to copyright** in South Africa."*
- *"The tariff list is, in many instances, **irrational, lacks scientific basis**, and is **not cost-based**."*

More than one decade later, these deficiencies persist—or have worsened—highlighting NAMAF's **ongoing unauthorized use of copyrighted material**, **overreach beyond its statutory mandate** (which, under the Medical Aid Funds Act, is limited to regulating medical aid funds), and **failure to address fundamental procedural shortcomings caused by outdated frameworks**.

NPPF's references to these issues are based on factual, independently documented findings. Consequently, NAMAF MC's accusations against NPPF are **false, misleading, and defamatory**. If NAMAF MC continues to make such claims, NPPF reserves all legal rights, including the right to seek appropriate legal recourse to protect its reputation and interests.

4. NAMAF's Regulatory Purview

Contrary to NAMAF's persistent assertions that it is entitled to establish benchmark tariffs and enforce ICD-10 coding as part of its clinical governance role—citing apart from the MAF Act the Supreme Court ruling as the source of such authority—the ruling primarily addressed the scope of the Competition Act and the definition of an "undertaking." It did not affirm that the Medical Aid Funds (MAF) Act grants NAMAF the statutory authority to set tariffs.

While the Court's decision shields NAMAF's benchmark tariff-setting process from competition law challenges, it does not confer legal authority under the MAF Act to impose such tariffs. The ruling merely establishes that the Namibia Competition Commission (NaCC) lacks jurisdiction over medical aid funds in this context. However, it leaves unresolved the fundamental question of whether the MAF Act itself grants NAMAF the power to engage in tariff-setting.

Senior Counsel and appointed Acting Judge Reinhard Tötemeyer, in a legal opinion (handed to NAMAF), concluded that the MAF Act does not confer explicit authority upon NAMAF to determine benchmark tariffs. His opinion emphasizes that no provision within the Act expressly grants NAMAF this power. By extension, NAMAF similarly lacks the authority to mandate the use of ICD-10 clinical codes within this framework, as such a requirement would necessitate **explicit statutory authorization** in **the Act** which is **NOT** the case.

Despite NPPF having repeatedly communicated this position to stakeholders, including NAMAF, for many years, the NAMAF MC **continues to misrepresent NAMAF's authority** to the public. NAMAF MC's ongoing portrayal of its position as legally tenable is misleading, inconsistent with the statutory framework, and lacks judicial validation.

5. Limitations to Safeguard Privacy and Confidentiality

Article 13 of the Namibian Constitution guarantees the right to privacy (except where the health status is in the interest of public safety). However, medical aid funds—acting on NAMAF's instructions—require fund members to waive this constitutionally enshrined right by compelling them to disclose their ICD-10 diagnostic medical status. This occurs without any regulatory framework safeguarding their right to confidentiality.

While NAMAF's MC publicly demands adherence to laws, it has failed for 30 years to enact regulations governing the conduct of medical aid funds. Section 18 of the MAF Act explicitly states that only regulations can hold funds accountable, yet NAMAF has neglected this statutory responsibility. Consequently, medical aid funds remain unregulated while simultaneously imposing invasive disclosure requirements on their members.

In jurisdictions where ICD coding is mandatory, legal protections—such as data protection laws, health information privacy statutes, or constitutional safeguards—ensure the confidentiality of sensitive medical data, particularly mental health-related information. These protections apply irrespective of whether an organization, such as NAMAF, establishes its own internal rules. However, Namibia lacks such statutory protections, creating a legal vacuum that medical aid funds exploit to justify unconstitutional privacy violations.

As a result, NAMAF, with the endorsement of regulatory bodies such as NAMFISA, effectively compels fund members to waive a fundamental constitutional right. This not only exposes members to unlawful data disclosures but also raises serious legal and ethical concerns. NAMFISA and NAMAF have been repeatedly made aware of these confidentiality issues, yet they persist in enforcing ICD-10 disclosure requirements under the primary premise of curbing fraud, waste, and abuse (FWA).

6. Clarification of NPPF's Position

In a public attack on NPPF's credibility on 26 March 2025, NAMAF MC also invited NPPF to a roundtable discussion to address NPPF's concerns. However, NAMAF MC has persisted in defending the legitimacy of its actions, maintained its rigid stance on ICD-10 implementation, and ignored the critical issue of unlawfully levied fees. Given the seriousness of these concerns, NAMAF MC could have engaged NPPF directly—particularly when it notified NPPF on 17 March 2025 that questions posed to the MC would only be addressed after 8 May 2025. Yet, within two weeks of this notification, NAMAF's MC issued publicly defamatory remarks instead of engaging in meaningful dialogue yet now expects cooperation.

To clarify, NPPF has consistently sought collaborative engagement with medical aid funds, proactively inviting their participation in a new cost study initiative aimed at establishing a legally sound and updated alternative to NAMAF's benchmark tariffs. A request was made to the Registrar of Medical Aid Funds to facilitate a meeting of discussion with the funds on the future of a representative funding model. Furthermore, NPPF has proposed modern fraud,

waste, and abuse (FWA) mitigation strategies for funds to consider, all while maintaining a firm stance against fraudulent practices—whether committed by healthcare practitioners or any other entity. Despite NPPF's clear willingness to engage, these efforts have been systematically ignored.

NPPF, however, reaffirms its commitment to constructive dialogue as a means of achieving systemic reform and remains open to engaging with funds, provided that the following key issues, which have been previously communicated, are addressed:

a) **Resolution of Unlawfully Levied Fees:** NAMAF must commit to a resolution regarding the reimbursement of unlawfully deducted practitioner fees. NAMAF's responses to NPPF and individual practitioners thus far have been legally and procedurally indefensible.

b) **Establishment of a Transparent Benchmark Tariff:** A Namibian benchmark tariff must be established, with costs computed and annually reviewed by independent bodies using transparent, scientifically validated criteria. These baselines should serve as the foundation for determining the affordability and sustainability of the healthcare funding sector.

c) **ICD-10 as a Non-Enforceable Interim Measure:** ICD-10 should be recognized only as an interim, non-mandatory measure, to be replaced by ICD-11 upon its implementation. ICD-10 must not be enforced as a mandatory condition for payment from 1 July 2025.

d) **Implementation of Conduct Rules for Medical Aid Funds:** Conduct rules for medical aid funds must be established in accordance with Section 18 of the MAF Act. These rules must include strict confidentiality provisions to safeguard patient data submitted through any ICD coding requirement by healthcare practitioners.

e) **Transparency for Fund Members Regarding NBT Provisions:** Fund members must be granted access to the current NBT framework to ensure they can verify, understand, and challenge healthcare costs. This transparency will serve as an additional safeguard against FWA.

f) **Regulation of Medical Aid Fund Administrators:** There is an urgent need for enabling legislation within the FIM Act to regulate medical aid fund administrators. This will ensure that administrative operations align with international best practices, promoting efficiency and accountability in healthcare funding.

g) **Strengthening Fraud Prevention and Regulatory Oversight:** NAMAF and relevant stakeholders must formally commit to investigating and implementing effective mechanisms to prevent the overutilization of healthcare funds - other than reducing member benefits. Activating deterrents in the FIM Act against fraud and regulatory

failures—applicable to all stakeholders, including statutory bodies such as NAMAF, NAMFISA, HPCNA, and healthcare practitioners is imperative.

h) **Consideration of Regulatory Reform:** Should NAMAF MC continue its longstanding adversarial stance toward healthcare practitioners—as demonstrated over the past 12 years and publicly announced recently —the establishment of a Medical Control Board must be introduced as a fair regulatory mechanism in the public's interest.

NPPF stands firm in its position that NAMAF MC (who consists of the funds) must engage in meaningful discussions and take substantive action toward resolving these critical issues. If NAMAF MC continues to obstruct progress through misrepresentation and delay tactics, regulatory intervention will become inevitable.

7. Public and Regulatory Escalation

In response to the lack of adequate responses from funds, the NPPF has taken a series of actions to ensure *'equity, fairness, transparency, and sustainability'* within the health funding industry. Some of these actions are already underway and will continue unless a tangible response is received from the NAMAF MC regarding the proposed steps outlined **in paragraph 6, by 21 April 2025.** Additional actions will be activated after this date.

a) **Ministerial Engagement:** The NPPF has formally notified both the Ministry of Finance and Public Enterprises (MOFPE) and the Ministry of Health and Social Services (MOHSS) that NAMAF's failure to properly manage sustainability—due to its non-compliance with the provisions of the Medical Aid Funds (MAF) Act, which regulates medical aid funds—necessitates statutory reform. As such, it is in NAMAF MC's best interest to respond to the proposal in paragraph 6, ensuring that all relevant authorities, including regulatory bodies, are subsequently informed of NAMAF's commitment to the process and that no further escalation to the Office of the President will be necessary.

b) **Solidarity and the Legal Push for Reform:** The entire healthcare sector and its principal representative bodies are united in protest against NAMAF MC's decade-long overreach, demanding urgent and fundamental reform. The legal grounds for challenging NAMAF, the Funds, and the Trustees are well-established, despite NAMAF MC's continued attempts to justify its *ultra vires* actions.

   Should NAMAF MC fail to address the issues outlined in point 6 in time, the funding industry will potentially face significant legal consequences. Specifically, Principal Officers and Trustees may be held personally liable for legal fees and restitution exceeding N$30 million to remedy regulatory failures resulting from their neglect to uphold the provisions of the Medical Aid Funds (MAF) Act and its regulations.

This liability extends to the envisaged implementation of ICD-10 codes, statutory and constitutional violations, which are not mandated by the Act but have been imposed based on NAMAF's misinterpretation of its authority—an interpretation sustained by rhetoric rather than statutory law, self-reinforced over time to the point that NAMAF regards it as truth, yet ultimately contrary to established administrative law principles.

c) **Stakeholder Engagement:** Additionally, the NPPF is in the process of establishing a framework for continuous engagement with the media, patients, and their employers. It will not only inform about incidental matters but also the risk that patients' personal information may be exposed without recourse. Insurance brokers are allegedly on record for approaching funds to obtain medical information contained in claims, which is reportedly **provided without proper safeguards**, particularly for individuals with **mental health** diagnoses. HCPs may be unable to comply with the MC's demands, as doing so could expose them to violations of professional conduct under the Health Professions Council's ethical guidelines. Furthermore, patients may ultimately discover that, despite having medical aid, their medical fees may not be covered by the funds. In light of this, it is imperative that employers begin considering alternative healthcare funding options, putting the onus on legislators to respond with enabling legislation.

d) **Commitment towards its Patients:** The NPPF remains open to meaningful dialogue, provided that NAMAF's MC is prepared to reconsider its prevailing stance. All of the NPPF's proposals will positively impact the sustainability of the healthcare funding industry. These proposals are intended to find common ground, and acting in support of a shared cause is essential in upholding ethical standards and ensuring the long-term sustainability of a sector that both parties, along with their members and patients, rely on for future prosperity.

We look forward to receiving a timely and constructive response from the MC. Additionally, we request that all misleading statements about the NPPF published in the media be publicly corrected within seven days. Kindly provide the NPPF with a copy of this correction

Yours faithfully

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Cc: The Minister of Finance and Social Grants: **Honourable Dr Ericah Shafuda,**

The Minister of Health and Social Services: **Honourable Dr Esperance Luvindao,**

NPPF, NHSP, Hospital, Specialist, Pharmacy, Medical & Allied Associations as well as Members.