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Email: [nppfmanagement@gmail.com](mailto:nppfmanagement@gmail.com)

18 July 2025

Dear Dr Hoffmann,

**RESPONSE TO NPPF CORRESPONDENCE REGARDING THE PUBLICATION OF LISTS**

We write in response to your recent correspondence addressed to our Mr Gert Grobler, concerning the publication and dissemination of the Nammed Designated Service Provider (DSP) and the Healthcare Providers Claiming 150% or Below (HPC150) lists (hereafter jointly referred to as the lists). We have carefully considered the issues raised by the NPPF, including your formal objection dated 13 July 2025, and herewith clarify Nammed's position in respect of the legal, ethical, and practical issues you have raised.

Nammed's primary objective in publishing the lists is to empower Nammed members with accurate information regarding potential co-payments, thereby enabling informed choices about healthcare providers. The HPC150 list is compiled from verified historical claims data, specifically in-hospital claims, and is updated quarterly to ensure ongoing accuracy. The methodology is transparent and actuarially sound, and the list is not intended to restrict member choice to providers.

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**A. Hill** – Trustee

**N. Haulofu** – Trustee

**J. Iipinge** – Trustee

**C. Jacobs** – Trustee

**E. Kahuva** – Trustee

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We acknowledge the importance of data quality and accuracy, and Nammed has demonstrated a commitment to promptly correcting any inaccuracies brought to its attention. For example, where a provider has indicated that their billing practices do not align with the HPC150 list criteria, Nammed has acted swiftly to remove or amend the relevant entry. This process is ongoing and forms part of Nammed's commitment to responsible data management.

We note your reference to the Namibian Competition Act, 2003, and the Supreme Court's decision in NAMAf and Others v Namibia Competition Commission (2017 NASC 27). As confirmed by the Court, medical aid funds such as Nammed are not "undertakings" for the purposes of the Competition Act, and the Competition Commission lacks jurisdiction over their activities in this context. The publication of the lists does not constitute price fixing, concerted practice, or any other conduct prohibited by the Act. The lists are a factual resource for members and does not require or induce providers to align their fees.

With respect to the right to fair administrative action under Article 18 of the Namibian Constitution, Nammed's actions are not those of a public administrative body, but rather of a private entity acting within the scope of its contractual and statutory obligations to its members. The publication of the lists is therefore not subject to the requirements of administrative justice in this context.

Nammed recognises the importance of the right to privacy as enshrined in Article 13 of the Namibian Constitution and is committed to upholding the highest standards of data protection and confidentiality. The HPC150 list is compiled from claims data lawfully held by Nammed in the ordinary course of business. The use of this data to inform members about potential co-payments is both necessary and proportionate to the legitimate business purpose of member empowerment.

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While explicit consent from providers for publication is not strictly required under current Namibian law, Nammed is committed to transparency and fairness. Providers are notified of their inclusion and are afforded the opportunity to request correction or removal of their information. Nammed maintains robust procedures for access, correction, and objection, and will continue to enhance these processes in line with emerging best practice and anticipated statutory requirements.

The lists are published solely for the purpose of informing Nammed members about potential co-payment risks. The information disclosed is limited to what is strictly necessary for this purpose and does not include unnecessary detail or commentary. Nammed does not use the lists for marketing or commercial gain.

The lists are made available only to Nammed members and are managed in accordance with established data protection principles. Nammed is committed to openness and transparency, and will continue to provide clear information to both members and providers regarding the purpose, methodology, and implications of the lists.

Nammed remains open to constructive engagement with the NPPF and individual providers. Where legitimate concerns are raised, Nammed will act promptly to investigate and, where appropriate, correct or remove information. Nammed reserves all rights in respect of any unfounded allegations of unlawful conduct, misrepresentation, or reputational harm.

We welcome further dialogue with the NPPF to ensure that the interests of both members and providers are balanced in a fair, lawful, and transparent manner.

This letter is provided without prejudice to Nammed's rights and remedies, all of which are expressly reserved.

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We trust that this response clarifies Nammed's position and addresses the concerns raised by the NPPF. Should you require any further information or wish to discuss these matters in greater detail, please do not hesitate to contact us.

Sincerely yours,



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Sam Kauapirura

Chairman of the Board of Trustees

Nammed Medical Aid Fund

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19/07/2025

**To:**

Mr. Gert Grobler – Principal Officer

NAMMED Medical Aid Fund

Windhoek, Namibia

Via email: [nammedpo@nammed.com.na](mailto:nammedpo@nammed.com.na)

Dear Mr. Grobler,

**RE: Formal Challenge to Publication of HPC150 & DSP Lists – Competition Act Violations, Misrepresentation, and Data Misuse**

Receipt of your letter dated 18/07/2025 is herewith acknowledged. After reviewing your response and in light of the Namibian Competition Commission (NaCC) Advisory Opinion of December 2024, we must emphatically reject NAMMED's position. The lists, as published, constitute market-distorting conduct that contravenes both the letter and spirit of the Competition Act, 2003, while causing material harm to practitioners' reputations and commercial integrity.

This letter serves as NAMMED's final opportunity to resolve this matter amicably. While we respect NAMMED's mandate to protect its members, the current publication of the HPC150 and DSP lists is both misleading and harmful, effectively using patients as leverage against healthcare providers under an outdated NAMAf-derived tariff framework that has already generated excessive fund surpluses. We consider this practice a form of economic coercion, inconsistent with lawful competition, patient choice, and professional integrity. Unless NAMMED acts within 7 days to withdraw the lists and issue corrective clarification, the NPPF will have no choice but to pursue all regulatory and legal remedies without further notice.

## 1. Competition Act Breaches – Vertical Restraints and Price Signalling

The NaCC Advisory Opinion (2 December 2024) confirmed that NAMMED’s preferential contracting practices for its Basic Option “*had the effect of standardising pricing and constraining competition.*” The Commission warned that “*even where a fund is not classified as an undertaking, conduct that facilitates uniform pricing among providers or distorts patient choice may be viewed as a vertical restraint or concerted practice under Sections 23 and 26 of the Competition Act.*”

The HPC150 list replicates these harmful effects:

- It sets a *de facto* price ceiling of 150%, not mandated by statute or any lawful benchmark process.
- It exerts indirect pressure on providers to conform to fund-preferred pricing to avoid reputational disadvantage.
- It selectively excludes providers who have not yet had in-hospital claims, even when they charge  $\leq 150\%$ , which artificially limits patient choice and risks contravening Section 26(1)(c) of the Act (exclusionary conduct affecting market access).

While we acknowledge that the Supreme Court’s decision in *NAMAF v NaCC* (2017 NASC 27) established that medical aid funds are not undertakings, the NaCC has clarified that fund-driven mechanisms that influence undertakings (practitioners) can still attract scrutiny when they result in anti-competitive effects.

## 2. Misrepresentation and Defamation Risk

The HPC150 list falsely includes several providers who do not charge 150%, while excluding others who do but whose patients have not used ABH, thereby presenting a misleading representation of practitioner pricing behaviour. This misrepresentation harms professional reputations, as patients are misled into believing certain providers are “*preferred*” or “*cheaper*” based on flawed and incomplete data.

NAMMED’s assertion that practitioners can “*request correction or removal*” after publication does not mitigate the harm already caused by the unauthorized, **public dissemination** of false pricing implications.

### 3. Data Misuse, Privacy, and Jurisdiction

Your claim that the lists are “*made available only to Nammed members and are managed in accordance with established data protection principles*” is contradicted by the fact that they are **publicly accessible online** on NAMMED’s website. **Anybody** with an internet connection can peruse the DSP list. The HCP150 list is equally accessible via:

<https://www.nammed.com.na/uploads/documents/9f1f4fe54d08d10ff0d87bec36985282149fe3ad.pdf>.

By publishing practitioners’ commercial identities and fee behaviours without consent, NAMMED is:

- Exploiting confidential claims data (derived from pre-authorisations, billing information and patient correspondence) for cost-containment purposes,
- Interfering with constitutional rights to privacy and correspondence under Article 13(1) of the Namibian Constitution, and
- Violating common-law protections of reputation and commercial integrity.

Moreover, NAMMED has no jurisdiction or statutory mandate to disseminate this information. Under Section 88(2) of the Health Professions Act, 2024 (Act 16 of 2024), the legal obligation to disclose fees for services rests **solely with registered healthcare providers** to their **patients**. By pre-emptively publishing selective pricing classifications to **patients**, NAMMED overreaches into a regulatory function that it does not lawfully possess, nor can it obtain such authority through its representation on NMAF - as the statutory mandate resorts under the **Health Professions Council of Namibia**.

This overreach is compounded by NMAF’s failure to act under Section 18 of the Medical Aid Funds Act (Act 23 of 1995), where the Management Committee—of which NAMMED is a member—has omitted its duty for about thirty (30) years to publish the mandatory conduct rules required to guide fund behaviour. This omission has created a regulatory void that now facilitates unlawful market interference to the detriment of **both providers and patients**.

### 4. Demand for Withdrawal and Corrective Action

We therefore persist in our demand that NAMMED:

- 4.1 Immediately withdraw the HPC150 and DSP lists from public and member platforms;**
- 4.2 Issue a public correction** clarifying that listed providers have not contracted with NAMMED or consented to the designation;
- 4.3 Cease all publication of practitioner names, fee data, or implied pricing classifications without written consent;**
- 4.4 Engage directly with NPPF** to develop transparent, evidence-based member communication tools that comply with the Competition Act and statutory obligations.

Should NAMMED fail to comply within **7 calendar days**, NPPF will:

- **File a formal complaint with the NaCC** for ongoing anti-competitive conduct and vertical price signalling;
- **Refer the matter to NAMFISA** for regulatory investigation of NAMMED's overreach and lack of mandate to disseminate practitioner fee information to patients under the Medical Aid Funds Act; and
- Support **civil claims by affected practitioners** for defamation, misrepresentation, and economic loss.

## **5. Constructive Resolution**

The NaCC's 2024 advisory opinion underscores the need for **collaboration rather than unilateral market interference**. NPPF remains open to dialogue but will not tolerate practices that undermine **the integrity of the healthcare market, the independence of practitioners, or the trust of patients**.

Yours faithfully,



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**Dr Jürgen Hoffmann**  
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## ANNEXURE A

### Key Findings of the NaCC Advisory Opinion to NAMMED (2 December 2024)

1. The NaCC found that NAMMED's preferential contracts *"had the effect of creating indirect price standardisation and discouraging cost-reflective billing,"* contrary to the principles of Section 23(1) of the Competition Act.
2. The Commission clarified that medical aid funds, while classified as undertakings, can still *"facilitate or induce anti-competitive outcomes through vertical arrangements with providers."*
3. The NaCC warned that public communication or listings that influence provider pricing or patient choice may constitute *"indirect price signalling" and risk contravening Sections 23 and 26 of the Act."*
4. It concluded that patient choice must not be distorted by fund-driven representations that imply endorsement, contractual preference, or price compliance absent actual agreements.
5. Any arrangements or representations involving healthcare providers must be transparent, accurate, and not misleading.
6. Selective or preferential communication by funds can distort competition and misinform patients.
7. Provider listings or endorsements must not create the impression of contractual relationships or price compliance unless such agreements exist.

-END-