

Duty to represent

The Law Society of South Africa (LSSA) held a press conference to address statements made by Minister of Health, Dr Aaron Motsoaledi, on the role of attorneys in medical malpractice claims. The press conference was held in Durban on 19 March prior to the LSSA's annual general meeting. Present at the press conference were outgoing Co-chairpersons Max Boqwana and Etienne Barnard, as well as incoming Co-chairperson Busani Mabunda.

Mr Boqwana said attacks on the law profession are made because the public is unaware of the expensive nature of litigation. He added that, typically, during a medical malpractice case, attorneys take on the burden of expenses as they need to employ experts that will assist with the matter. 'People that utilise public hospitals cannot afford experienced advocates to work on their cases. Therefore, attorneys finance the whole process and pay for all the high fees and bills from advocates or experts,' he said.

Mr Boqwana said that it is the duty of attorneys to intervene and assist the poor sector of the community with matters of this nature because every citizen has a right to legal representation and because some claimants are not fully aware of their rights. 'Attorneys should not apologise for their role in society,' he added.

Mr Boqwana noted that media reports have raised concerns of collusion between attorneys and doctors in medical malpractice claims. He said that the LSSA does not condone such behaviour. 'There are instances of misconduct by attorneys; this involves touting and buying work. There are also instances of overreaching and overcharging that have been reported to the four statutory provincial law societies whose function is to regulate the attorneys' profession. The matters reported to the law societies are dealt with within the disciplinary structures of those law societies,' he said.

Mr Boqwana added: 'There is no way an attorney can manufacture a claim. That matter would not be taken through court. They would never succeed as proper verification of the injury would be made. Therefore, claims that are taken to court are valid and actual.'

Mr Barnard said that law societies investigate complaints that are brought to their attention and they then decide if the attorney is guilty or not. Giving the statistics of attorneys that have been found guilty of misconduct, Mr Barnard said that the figures were minor in comparison to the number of attorneys that practice in the country. 'Attorneys do their work in the interest of the public to ensure that the public has the right to representation. They sometimes do this *pro bono*,' he said.

Speaking on fabricated claims, Mr Barnard said: 'An attorney that takes a false claim to court would do that at their own peril. The injury would have to be proven through expert evidence and the evidence would be tested by the court'.

At the onset Mr Mabunda said that he acknowledges that attorneys are not angels. He added that there are processes in place that deal with misconduct and are there to protect the public. 'Attorneys have a duty to ensure that the public is represented in medical malpractice matters. Attorneys cannot fold their arms while there is wrongdoing. ... The adjudication with respect to quantum is made by the courts after they have had regard of expert opinion, lawyers do not make the determination,' he said.

Giving a reason for the spike in medical malpractice claims, Mr Boqwana said that South Africa is a rights-based constitutional dispensation and the public is becoming aware of its rights. He said the public wants to utilise the benefits of the Constitution. On the other hand, Mr Boqwana said that the rise in claims can be attributed to challenges that hospitals face. 'The public hospital system is under stress and we have seen a decline in standards in the past years,' he said.

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