

THE LAW SOCIETY
OF THE
NORTHERN PROVINCES



THE PUBLIC PROSECUTOR
VAN DIE
NOORD-OORSTREEK

Proctorium Building
123 Paul Kruger Street, Pta, 0002
Docex 50
P.O.Box 1493, Pretoria, 0001
Tel: 012-338 5800
Fax: 012-323 2606
E-mail: communication@lso.co.za

Incorporated as the Law Society of the Transvaal
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Serving Gauteng, Mpumalanga, Limpopo & North West Provinces
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Proctoriumgebou
Paul Krugerstraat 123, Pta, 0002
Docex 50
Postbus 1493, Pretoria, 0001
Tel: 012-338 5800
Faks: 012-323 2606
E-pos: communication@lso.co.za

**FASTFAX
MATTERS BEFORE COUNCIL
15 APRIL 2011**

MEDICAL AID SCHEMES / ROAD ACCIDENT FUND CLAIMS

1. Attorneys are referred to the fastfax dated 1 February 2011 dealing with medical aid schemes and Road Accident Fund (RAF) claims.
2. The nature of the relationship between a medical aid scheme (a / the scheme) and its members is of importance and the following should also be noted:
 - 2.1 the relationship between a scheme and its members is not purely contractual in nature, but includes statutory, regulatory and contractual elements with its contractual terms set out in the scheme's rules as amended, approved and registered by the Registrar of Medical Schemes from time to time;
 - 2.2 the rules of some schemes oblige members, who undergo hospitalization and/or treatment in relation to injuries sustained in motor vehicle accidents and who claim and receive scheme benefits in respect of their medical expense, to claim compensation from the RAF and, if successful, to reimburse the scheme what it is paid to or on behalf of such members. Where the RAF rejects the claim the members bears no obligation to reimburse the scheme;
 - 2.3 withholding an amount due to a scheme by virtue of its rules may amount to a failure to repay a debt within the meaning of Section 29(2)(b) of the Medical Schemes Act, no. 131 of 1998 (the Act) and may entitle a scheme to reclaim what it has paid to or on behalf of such members and/or to terminate membership;
 - 2.4 the rules of a scheme must provide for advance written notice to members of any change in contributions, benefits etc. or any other condition affecting their membership (Section 20(1)(l) of the Act);
 - 2.5 Section 30(2) of the Act provides that a scheme is obliged to provide free of charge to every member, on admission, a detailed summary of the rules;
 - 2.6 a scheme may amend or rescind its rules or make additional rules and no such amendment, rescission or addition is valid unless it has been approved by the Registrar of Medical Schemes;
 - 2.7 the rules of a scheme are binding on the scheme, its members, its officers and any person who claims benefits under the rules or whose claim is derived from a person so claiming (Section 32 of the Act);
 - 2.8 a scheme is in terms of the provisions of Section 41(1) of the Act obliged to deliver to a member on demand and on payment to the scheme of the fee prescribed by the rules, its rules;

- 2.9 a member is entitled to inspect free of charge the scheme's rules at the scheme's registered office and to make extracts therefrom (Section 41(2));
- 2.10 Section 57(4) of the Act deals with the duties of the trustees of a scheme and includes that they are obliged to ensure that adequate and appropriate information is communicated to its members regarding their rights, benefits, contributions and duties in terms of the scheme's rules (sub-section (d)).
3. In the lastfax dated 1 February 2011 attorneys were cautioned against advising clients to agree to the furnishing of undertakings, or the attorney themselves signing such undertakings on behalf of their clients, in the absence of proof that there is a clear contractual obligation on the members in terms of a written contract of membership entered into at the time the member first joined the scheme that the member is so obliged. Attorneys who practise in this field of law are strongly encouraged to familiarize themselves with the provisions of the Act, the regulations thereto and the relevant scheme's rules when advising their clients regarding the reimbursements of medical expense amounts recovered from the Road Accident Fund.



S. A. THOBANE
President