

THE LAW SOCIETY
OF THE
NORTHERN PROVINCES



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Incorporated as the Law Society of the Transvaal
Ingelyf as die Prokureursorde van Transvaal

Serving Gauteng, Mpumalanga, Limpopo & North West Provinces
Bedien Gauteng, Mpumalanga, Limpopo & Noordwes Provinsies

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**FASTFAX
MATTERS BEFORE COUNCIL
1 FEBRUARY 2011**

URGENT NOTICE TO MEMBERS:

MEDICAL AIDS / ROAD ACCIDENT FUND CLAIMS

1. The Council has become aware of pressure being applied on Claimant Attorneys by Medical Aids and/or Medical Aid Collection Attorneys, to furnish undertakings to the Medical Aids, to reimburse such Medical Aids out of the proceeds of Road Accident Fund claims and where the Medical Aid may have covered certain medical disbursements arising out of the accident.
2. Similar or greater pressure is being brought to bear on the Medical Aid Members themselves by Medical Aids and/or their Collection Agents, with threats being made by the Medical Aid/Collection Agents to reverse medical cost disbursements already made on behalf of the member, or to decline further benefits, unless and until the member and the member's Attorney furnish an unqualified undertaking to reimburse the Medical Aid in full any relevant amounts recovered.
- 2.1
- 2.2 The Council is not aware that the Medical Aids in question tender to bear a pro rata portion of the costs and/or risks involved in the litigation by their members and where such litigation is intended to also benefit the Medical Aid.
- 3.
- 3.1 Members are cautioned against advising clients to agree to such undertakings or the Attorneys themselves signing such undertakings on behalf of their client, **IN THE ABSENCE OF PROOF THAT THERE IS A CLEAR CONTRACTUAL OBLIGATION ON THE MEDICAL AID MEMBER IN TERMS OF A WRITTEN CONTRACT OF MEMBERSHIP ENTERED INTO AT THE TIME THE MEMBER FIRST JOINED THE MEDICAL AID THAT THE MEDICAL AID MEMBER BE SO OBLIGED.**
- 3.2 Where the Medical Aid alleges that there was a variation to the initial written contract of Medical Aid Insurance, Attorneys should insist on a copy of such variation signed by the member **PRIOR** to the incident giving rise to a current claim, being provided to the Attorney and verified with the client.
4. An Attorney who advises their client to sign an undertaking in favour of the Medical Aid, or where the Attorney does so on behalf of the client in the absence of clear written proof of the client's obligation to do so, as referred to above, may well find himself/herself being liable to the client for a refund of all amounts paid to the Medical Aid and flowing from the Attorney's negligence in failing to properly protect the client's interests.
5. Members are encouraged to refer details of matters to the Council, where Attorneys acting on behalf of Medical Aids persist in pressurizing Attorneys and/or their clients in seeking to force the client and/or the Attorney to sign undertakings as referred to above, and where such Attorneys have failed and/or refused to provide adequate documentary evidence that the Attorney's client is in fact obliged to sign the undertaking in favour of the Medical Aid in question.

Mr S A Thobane
President