Summation SAMLA summit 05th May 2019

24th July 2019

Introduction

The Medicolegal industry incorporates and does not limit itself to the skills and expertise of persons within the actuarial, educational, legal, and medical professions. Every person involved in the provision and consumption of healthcare services in South Africa is directly and indirectly influenced and impacted by the medicolegal sector.

The South African Medicolegal Association (SAMLA)[1], a non-profit organisation founded in 2000[2] has worked in a coordinated manner with associations, societies, interest groups and professionals to educate and support persons making contributions in the medicolegal marketplace.

SAMLA, acknowledges the significant contributions already made to date by all involved stakeholders in government, civil society, public interest group and passionate individuals.

Key matters of concern relating to the medicolegal sector were tabled and discussed during the seminar hosted by SAMLA on the 5th of May 2019.

[1] Lerm – SAMLA information
[2] SAMLA MoI; SAMLA Memorandum of Incorporation

Professionals from all sectors made representation to Yourself and your Office on pressing issues relating to the formalization of a medicolegal profession within South Africa; healthcare leadership pertaining to cerebral palsy and funding of future care for persons affected by cerebral palsy; and matters of accessing funds for care within the Road Accident Fund[3] [4].

The collective sentiment reflected that health reform requires a merging of Constitutional guarantees with universal access to health services[5] and significant improvement in health literacy to positively shift the burden of disease on citizens of South Africa. All participants acknowledge the positive steps that stakeholders have already made and continue to make in this journey.

In reference to the above, three central issues were discussed during the seminar on the 5th of May as pertaining to the South African medicolegal environment.

The need to recognize and make provision for the formalization of the medicolegal discipline in South Africa;

1. the burden placed on the fiscus by cerebral palsy litigation and the costs borne by the state to care for persons living with cerebral palsy[6]; and
2. the burden placed on the fiscus and universal access to health services by recipients of RAF awards due to inefficiencies and limitations in the current RAF system[7].

Recognizing the litigious nature of the current Health economy and the resultant

[3] Hennie Klopper
[4] Judge Claassen - Key Medico – Legal statistics
[5] Trevor Reynolds
[6] SLAB slide (Actuarial Society)
[7] Lawrence Barit; Judge Claassen (Key Medico – Legal statistics); Greg Whittaker (RAF,RABS slide); Alex vd Heever

unfortunate barriers to care and high costs to the State[8] [9], we seek your indulgence in making provision for the formalization of a medicolegal discipline with the requisite legislative endorsement and executive support.
The SAMLA desire is to support that journey through a first step of formalizing the medicolegal sector and creating a medicolegal regulatory body.

Our constitutional mandate

South Africa is a constitutional democracy, and places value in a rights-based legal culture.

3. Dignity remains a fundamental human right. The Universal Declaration of Human Rights engenders this right globally and dignity for all persons is endorsed by the South African Constitution. The Bill of Rights chpt 2, s. 10 states that everyone has inherent dignity and the rights to have their dignity respected and protected.

4. Access to affordable and high-quality healthcare services is explicit in the Universal Declaration of human rights and in the South African Constitution, notably chpt 2, s. 27.

5. Chpt 2, S. 33 of the Constitution provides every individual the right to have any dispute resolved by the application of law decided in a fair public hearing before a court, or where appropriate, another independent

[8] South African Medical Malpractice Lawyers Association 2018; supplementary submission SAMMLA 2018
[9] Andre Calitz

and impartial tribunal or forum. There is need for progression of law reform in the medico-legal sector[10] [11].

6. This may or may not have been intended to include conciliation and mediation. Proposed amendments to Uniform Rule 41(a) would make mediation a core 'first principle' in dispute resolution. This is already in practice in employment law and labor dispute management through the process of conciliation, mediation and arbitration[12].

7. In matters of healthcare services notably access to the services, maintaining the quality of these services and ensuring the adequate accountability for the outcomes, consideration should be given to the role of s. 39 of the Constitution.

8. This makes provision for the courts and legal bodies to consider international laws when interpreting the Bill of Rights and potentially allows for the formation of an independent regulatory body advocating for national health litigation matters which is consistent with those in other jurisdictions.

9. SAMLA recognizes that there are barriers and limitations to the accessing and the provision of healthcare services to SA citizens in circumstances relating to administrative processes involving the State and injured persons[13] [14] [15].

---

[10] Leigh de Souza
[11] Dreyer – SASOG Law reform
[12] Gauteng Pilot project
[13] Prof G. Saayman
[14] BESTLLAW – labour-accountability-arbitration
[15] SAMLA – Claasen; Edeling, Guidelines protocol medical mediation

10. Needs exist to further support healthcare and legal practitioners in terms of education, professional guidance and consolidated regulatory oversight[16] [17] [18] [19].

11. In the medicolegal context, there are challenges for SA citizens in their access to healthcare and social security[20]. This is evident in the difficult due process in achieving Road Accident Fund (RAF) settlements and certificate of harm matters; and in the equitable settlement of medical negligence disputes between patients', their representatives and the State.

12. SAMLA has expressed opinions in this regard to appropriate Portfolio committees including, but not limited to, the Portfolio committee on Transport in relation to road accident victims and the Portfolio committee on Justice in relation to the state liability amendment bill.

13. Submissions have been made to the Constitutional Court (2010) on the tariff for medical treatment for road accident victims.

The Medicolegal profession

1. Concerns relating to the medicolegal industry were raised including but not limited to
    a. The way in which the medicolegal industry should be defined;
    b. Which stakeholders constitute the medicolegal industry; and
    c. The manner in which medicolegal practice, and how the industry and overall sector be regulated[21].

[16] Willem Moore – Ethics as the key to professional healthcare
[17] Stellenberg – improving safe, quality patient care
[18] Carina vd Wall – Nursing Clinserv synopsis
[19] Romany Sutherland - Note to President
[20] Constitution of South Africa, Chpt 2, s. 27
[21] Guan Marus – Medicolegal crisis in SA, accountability

2. Discussion acknowledged that interdisciplinary medicolegal practice has not historically been an academically integrated or inclusive discipline in the administrative, legal, and medical curricula at undergraduate levels of education[22].

3. SAMLA has implemented post graduate multidisciplinary education[23] and training to address interdisciplinary cooperation[24] in RAF matters, Case Management, medicolegal process[25] and mediation.

4. Three suggested areas of focus to the formalization of a medicolegal profession were presented, namely:
    a. the creation of a legislatively mandated counsel to determine the curricula, accredit providers/practitioners, drive the establishment of a medicolegal college or colleges, and establishing a universal code of conduct for medicolegal practitioners, regardless of their professional field of registration;
    b. the creation of criteria and scope of practice for practitioners, establishing categories of registration, the formation of a register of practitioners; and
    c. facilitation of disciplinary procedures[26] aligned to a published (legislated) code of conduct.

[22] Prof Becker – Augmenting training for RSA doctors
[23] Adv Lamey
[24] HJE-SAMLA-clinical negligence-legally privileged peer review
[25] Willem Moore – role of expert witness
[26] SAMLA code of conduct

Cerebral Palsy – Costs and care continuums

1. Discussion was led on contingent liabilities linked to birth procedures and related complications that resulted in the medical condition of cerebral palsy[27].

2. It was suggested that Cerebral Palsy is a 'no-fault' to the individual condition of multiple aetiology which has a significant and sustained impact on an individual's ability to live an independent and productive life as an economically and socially active person in their community and in South Africa.

3. The South African Society of Obstetricians and Gynaecologists (SASOG)[28] state that '*The increase in medico-legal claims in civil courts against Obstetricians and Gynaecologists has adverse effects on the discipline, the public at large and specifically on women. Obstetricians have basically become "uninsurable" and many have left or plan to leave obstetrics. Claims against the public sector will weaken the health system further and may send maternity services into a further downward spiral'.*

4. Aligned with the signatories of this letter, SAMLA and SASOG[29] offer their support to address this circumstance with strategies for supporting the continuum of medical care, funding the long-term care of persons with cerebral palsy, and establishing of centers of excellence for care.

5. Comments were raised as to the relative inequality of certain persons living with cerebral palsy receiving payments (settlement) as a consequence of their medical condition whilst other persons did not.

---

[27] Gerhard Strydom, MEC debt Cerebral Palsy matters
[28] SASOG – Medicolegal crisis executive summary
[29] Bhorat – SASOG-EOP

6. Recognising the burden of care assumed by the State, public-private partnership solutions may be explored for alternative care and funding models for the medium to long term residential care. A revision of the limitations and successes of professional case management for cerebral palsy individuals was actively discussed[30].

7. The creation of blended finance structures including but not limited to a restricted beneficiary 'cerebral palsy' medical aid was raised[31].

8. Consensus was reached that there are existing centers of excellence for the care of persons living with cerebral palsy and its resultant symptoms, morbidities and co-morbidities[32].

Road Accident Fund

Statutory mandate is recognized

Legislative review in progress

1. Road traffic accidents have a profound impact on the South African population in terms of the personal, social and economic impacts of personal injuries[33] [34].

2. The SAMLA has a long history of supporting the operations of the Road Accident Fund[35] in terms of participating in workshops, reviewing regulations and evaluating the manner in which to assess injuries and levels of impairment of injured persons[36].

---

[30] Patrick – Medicolegal crisis presentation
[31] Toby van Niekerk – CP care & funding etc
[32] Alison Crosbie, Julia Buchanan – important role of case management
[33] RAF RABS slide
[34] Klopper – Key Statistics
[35] DoT / RAF 10 April 2006
[36] HPCSA SINT; S Afr Med J 2013;103(10):763-766. DOI:10.7196/SAMJ.7118

3. In 2016 APRAV[37] has established a medical committee to investigate and develop proposals for an improved system of medical assessment and reporting for persons injured in road accidents.
4. The resultant injury assessment and reporting system was to determine appropriate awards of compensation for general (non-pecuniary) damages. Implementation of methods for assessing was aligned to initiatives to reduce effort and time for medical practitioners, representatives, administrators and courts, and should result in substantial cost-savings[38].

5. A vital component of the success of the RAF system is access to early referral for treatment, rehabilitation and resolution of the administrative processes surrounding the assessment, access to care and compensation for an injury[39].

6. Improved integration and cooperation is desired between medical and non-medical (legal, financial, interdepartmental) parties in order to create efficiencies within the Road Accident fund[40].

7. This includes a significantly improved preparation for litigation and the management of litigation costs in defending claims[41].

8. It remains a primary belief of all stakeholders that appropriate early treatment and rehabilitation will reduce the extent and costs of permanent

[37] APRAV medical committee report March 2016
[38] Hans Enslin – Road Accident fund concepts
[39] Leigh de Souza
[40] Lawrence Barit – RABS notes
[41] Prof Hennie Klopper -1 March 2019

disability and will return greater numbers of injured individuals to the productive workforce.

9. A process needs to be refined for claimants who dispute their awards to improve administrative efficiency and reduce both the length of time for resolution of disputes and the burden on the courts. Methods must be employed to limit the costs of legal representation and medicolegal reports to those that are necessary and reasonable, without infringing on the rights of individuals to representation and assistance.

Dr Brad Beira

Chair : SAMLA Submission to President Committee