
GERHARD J STRYDOM SC

The Protea Group
The Chambers
3 Protea Place
Sandown, Sandton
2146

Telephone (011) 775-5800
Telefax (011) 784-9090
Cell 083 266 8597

Private Bag X77
Benmore, 2010

Docex 47 Sandton Square

6 June 2019

The State President of South Africa
President Cyril Ramaphosa

RE: **MEDICO-LEGAL CRISIS IN SOUTH AFRICA**

MEC DEBT – CEREBRAL PALSY MATTERS (“CP”)

CP litigation created a financial crisis for the MEC. There appear to be thousands of litigious cases nationwide at present. Successful plaintiffs are awarded between R10 to R25 million on average per case. If not addressed urgently and efficiently the situation will continue to snowball with highly undesired consequences for the MEC.

Prevention

1. Labour wards in State Hospitals and the suitability of doctors and midwives (and their training) must be upgraded to acceptable standards. The selection of midwives must be strict to ensure their ability to cope efficiently in what becomes a very stressful environment at times. Under-staffed labour wards and a shortage of sufficient functional equipment (such as CTG machines for foetal heartrate monitoring) are major causes of litigation against the MEC. Inadequate recordkeeping and the storage of records became another major concern. Lost records without satisfactory explanation therefor count against the MEC, where, had the records been available it might have established acceptable and non-negligent care. I propose that the records in all CP cases be securely stored separately. Outsourcing is an option. Adequate prevention measures should reduce “*negligent*” exposure by at least 80%.

Current

2. In the interim an independent forum with CP knowledgeable Judges is

recommended, having its own rules, specifically aimed at identifying the triable matters in respect of liability as early as possible, and dispose of the un-triable matters without incurring unnecessary costs. The legal costs involved in the quantification of these matters are enormous, especially in respect of medical, hospital and related costs, and justify 20-25 experts per party. Their reports require an enormous kick-off expense (R25 000,00 average per report), followed by their trial related costs. The Supreme Court of Appeal (SCA) in ***Singh v MEC for Health, KwaZulu Natal*** (2010) comprehensively considered the quantification of a CP claim. This judgment offers litigants the opportunity to adopt the SCA's approach in order to eliminate the need to employ the full scope of experts, save for the life expectancy ("LE") experts and the actuaries. Matters have been settled in the past adopting this approach. The average life expectancy determined by 3 LE experts can be set as a standard. The SCA, in ***BM v the MEC, Gauteng*** (2017) awarded R1.8 million for general damages to a CP child. This award can be applied nationally, requiring only inflationary adjustments to current day terms. Loss of earnings will then be the only outstanding issue. Due to the substantially reduced life expectancy of children in the majority of cases, only 4 experts (educational and industrial psychologists) should be required. Loss of earnings usually represents at most 5% of the total claim.

GERHARD STRYDOM