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### MEDICOLEGAL CRISIS IN SOUTH AFRICA. ACCOUNTABILITY.

( **Dr Gian Marus**. Neurosurgeon, Expert Witness and Medico-Legal Representative of the South African Society of Neurosurgeons and the South African Spine Society.)

It is undisputed that remediating the current medical litigation crisis is an urgent priority and further education of participants in the process and refocusing on patient care will be required. This will need to be address in various forms and directed at health providers and administrators, together with the practitioners in the legal system and expert witnesses.

It would be essential to establish compliance by a review process for non-adherence to established standards of acceptable practice in the various noted spheres of activity and interactions between the various participants, and establish accountability.

1. **Health Providers and Administrators:** In the Public Health System Negligence claims are dealt with and settled by the MEC Health and legal representatives, while in the Private Sector the claims are dealt with by the insurers or indemnifiers. The focus is thus on the Civil Claim. In the majority of cases, that is the end of the matter. The actions of the culpable parties are hardly ever investigated, and the claim is frequently settled with a non-disclosure clause. This practice has led to lack of accountability and no remediation for negligent behaviour of the responsible individuals, be they doctors, nurses allied health workers, or administrators for neglecting to provide an adequate basis for care or maintenance of resources.

**All settled negligence claims** should thus be investigated by a properly constituted statutory regulatory or certifying body (that should co-opt members of the relevant specialty societies). The purpose of this would be as follows:

- **Expose inadequacies** in practice methods or work environments that could be remediated and prevent recurrence and expose repeat offenders;

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- **Data** from error/s analysis would be included in teaching and increased awareness of specific adverse events.
- **Awareness of serious potential repercussions** for dereliction of duties would also raise general standards of care, as opposed to what occurs at the current time, where there are no individual repercussions for the most part.

**2. Legal Practitioners and Expert Witnesses:**

A significant responsibility also rests on legal practitioners not to pursue claims or lodge claims without merit. Although the case may be withdrawn at a later stage it has already generated costs for the defense.

Biased or non-evidence based medical opinion by medical expert witnesses that causes an unfounded claim with unnecessary costs, will need to dealt with by the noted properly constituted statutory regulatory or certifying body.

**All withdrawn cases** should thus be reported and investigated to establish the cause, by an appropriately constituted statutory regulatory body, that would need to be established to evaluate causes, make appropriate recommendations to improve claim lodgments and sanction transgressors.