



Financial Mail

24 December 2004

By Jacqui Pile

Supreme court of appeal throws out medicine price regulations

This week's unanimous decision by a full bench of the supreme court of appeal (SCA) to overturn medicine pricing regulations does not signal the end of the battle between pharmacists and the department of health.

The department's Anban Pillay says it will appeal the decision in the constitutional court, which "may see the issues in a different light".

For the private sector it is a temporary triumph, reminding government that it must genuinely engage the sector and investigate the implications of its decisions before intervening in the market. But it may have caused irreparable damage to the relationship between pharmacists and the department.

The scrapping of the price controls means that pharmacists will not be limited to charging 26% on items under R100 or R26 for items over R100.

"There's unlikely to be a spike in prices," says Webber Wentzel partner representing the Pharmaceutical Society of SA (PSSA), Martin Versfeld. "Prices are likely to normalise once free-market principles come into effect." He says medical schemes will play an important role in keeping prices down by determining the price at which they're willing to reimburse members.

Though the removal of the regulations means drug manufacturers can stop using a single exit price, it's unlikely. They worked hard with the department to come up with a solution.

Pillay insists that unlike the manufacturers, pharmacists have not provided enough quality information and data for the department to calculate an appropriate and accurate fee.

"This case now goes beyond the numbers," says Pillay. "They attacked the fundamentals of the legislation."

In June this year, the PSSA and pharmacy retailer New Clicks took legal action against health minister Manto Tshabalala-Msimang and the head of the pricing committee, **Di McIntyre**, in the Cape high court, seeking to urgently overturn the regulations. They argued these would put most pharmacies out of business because they limited the amount pharmacists could charge for dispensing drugs and set a single exit price for drug manufacturers.

Judgment was delivered on August 27, dismissing the applications (see *By Invitation* December 10). The PSSA and New Clicks appealed. The applicants took the case directly to the SCA after Cape high court judge John Hlope took nearly three months to rule on the leave to appeal. Appeal judge Louis Harms slammed the delay, saying: "The judicial cloak is not an impregnable shield providing immunity against criticism or reproach." He also criticised the department's legal team for refusing to argue the merits of the case at the SCA.

Though representatives of both parties have said they are willing to work together to make medicines more accessible and affordable, and ensure pharmacies remain in business, there seems little chance of that happening soon. Pillay says even though the regulations have been overturned, the fundamental problem of setting an appropriate fee remains, since pharmacists are still not providing quality data.

Medi-Kredit CEO Wimpie du Plessis, who also did a study showing pharmacies would close down, says "at some stage the department is just going to have to believe the numbers".

But Harms said in his judgment that the regulations were fatally defective and that it would be extremely difficult if not impossible to draft sensible regulations unless the act was amended.

PSSA president Saddiq Tayob says pharmacists remain committed to the spirit of the legislation in making medicines more affordable. He says the PSSA recognises that medicines should not be treated as ordinary commodities and that some regulation is needed.

The private sector is anxious to repair its relationship with government. This, it seems, will have to await the outcome of a constitutional court ruling.

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