

MEDICAL MALPRACTICE

Lawyers grasp the scalpel

Medical practitioners beware. Slip up and there's a growing army of attorneys on the hunt for skyrocketing medical negligence settlements waiting to pounce.

And they are extracting their pound of flesh and then some. "We've seen settlement costs more than double in the past two years," says Medical Protection Society policy & media director Stephanie Bown. The society provides indemnity cover and legal assistance to 26 000 doctors in SA. The claims are also rising sharply, says Bown.

"The number of inquiries we receive has doubled every year for the past 10 years," says Ronald Bobroff, director of SA's oldest medico-legal specialist law firm, Ronald Bobroff & Partners. About half of the 100 inquiries the firm receives weekly are pursued, he says.

Also reflecting a surge in medical litigation, Jerome Fanning, a manager at insurance broker Alexander Forbes Claims, says claims above R5m jumped nine-fold in the past decade. He says plastic surgeons were hit first and now obstetrics and gynaecology are the prime targets, with a recent settlement topping R27m.

In obstetrics claims, the main reason is brain damage caused to a baby at birth and in the first 28-day neonatal stage, explains Bown. High costs of long-term care lead to huge settlements, she says.

For obstetricians, the cost of indemnity cover has soared, some hit by a 200% increase over the past year, says Fanning. Over the past four years, the annual cost of cover for obstetricians has on average risen from R80 000 to R156 000, he adds.

Fanning predicts that doctors in other areas of specialisation and general practitioners will also increasingly become litiga-

tion targets. Echoing his view, Bown says: "We expect the [rising claims] trend to continue."

She says SA has the steepest rise in settlements of any of the 10 countries in which the UK-based Medical Protection Society operates. To an extent SA is playing catch-up but there is also a



Ronald Bobroff Falling standards

growing awareness among consumers of their rights.

A big factor, she says, is the exodus of attorneys who specialised in Road Accident Fund (RAF) claims into the medical negligence arena. Driving the shift was an amendment to the RAF Act in 2008, removing rights of individuals injured in a road accident to sue those responsible. RAF claims are limited to R160 000.

The RAF is a factor, agrees Bobroff, but not the key one. Pulling no punches, he lays the greatest part of the blame on falling medical standards.

There are "pockets of excellence" among doctors but, overall, standards have fallen, Bobroff says. He points to doctors trained in SA after 1990 being required to "virtually start from scratch" before being allowed to practice in the UK.

Worse still are nursing standards, says Bobroff. "Nurses now receive only rudimentary training and discipline has collapsed," he says. "You can have the most brilliant surgeons but if nursing standards are poor it doesn't help."

Underscoring his view, health minister Aaron Motsoaledi conceded last year that only 19 of SA's 119 nursing schools had been inspected since 1998, with the most recent inspections in 2004.

Bobroff also takes aim at private hospitals' casualty units. "P1 [top-level] casualty units must be prepared for all emergencies 24/7 but they are often not."

Private hospitals have a convenient loophole, says Bobroff. "No patient is admitted before signing a waiver of liability form." The Consumer Protection Act does not change this, he adds.

"There are cases where we would prefer to sue the hospital but can't," says Bobroff. "So we turn to the second best, doctors. They can't contract out of negligence and end up as the fall guys."

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