

News Release

For Immediate Release

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Healing the wounding effects of medical litigation

Johannesburg – Managing medical risk in South Africa’s runaway healthcare litigation environment is a multi-faceted and difficult endeavour, but one that must be tackled to avoid dire healthcare delivery consequences.

This is according to Volker von Widdern, CEO, of EthiQal, a division of Constantia Insurance, a disruptive local insurer of healthcare professionals. He says some key strategies are essential. These include quick and cost-effective dispute resolution, managing the medical risk environment, offering affordable professional indemnity solutions tailored to the needs of South African doctors, and lobbying for legal reform.

He cites these interventions as vital to the incremental mitigation of rising billions in medical negligence costs. To illustrate; in the under-resourced and under-managed public healthcare sector, claims and pay-outs in mid-2017 stood at over R55 billion (excluding legal expenses), nearly a third of the national health budget. Thinly-spread specialists in both the public and private sectors, especially higher risk maternal and child services and neurosurgery, are highly vulnerable, with burgeoning claims threatening to render these fields unviable. The highest proportion of claims against state hospitals involve birth-related injuries, particularly cerebral palsy.

A recent survey of its members by the South African Society of Obstetricians and Gynaecologists (SASOG), shows that over half of respondents believe they will stop practicing in the next five years – leading to banner media headlines about “Who will be left to deliver our babies?” The risk burden would then simply accrue to the public sector, worsening the situation in already-overloaded district and tertiary hospitals.

According to SASOG, the annual cost for an obstetrician as per a dominant offshore mutual provider of professional indemnity cover has risen from R180 000 in 2013 to about R1 million currently, rendering practice overheads increasingly intolerable for those rendering services in the private sector.

Obstetricians, gynaecologists and neurosurgeons have however managed to remain in practice, knowing that with the home-grown EthiQal they have affordable lifelong protection for any medico-legal incidents that may arise from their practice during the period of insurance. Since launching in November 2016, EthiQal estimates that nearly half of South African neurosurgeons, obstetricians and gynaecologists in private practice have taken their cover.

An additional boost to SA’s frail economy is that VAT is paid on the more than R150 million gross annual premium written to date, which is contrary to the other dominant indemnity provider, whose offshore model does not make provision for the payment of such taxes in South Africa.

“Perfect storm” for hard-pressed doctors

Since 2008, South Africa’s medico-legal claims have accelerated, driven by a “perfect storm” of heightened patient awareness of their rights, a narrow, adversarial legal framework, and the coincidental promulgation of the Road Accident Amendment Act (RAAA). The legal amendment capped claims for those who suffered harm on SA’s roads, diverting litigation to the more lucrative healthcare field.

Von Widdern says avoiding medical errors through standardising practice guidelines and protocols, national peer review and support mechanisms, and more regular morbidity and mortality meetings are important aspects of continuously improving the quality of healthcare delivery. Legal reforms to help manage unfounded or vexatious claims and fairly settle legitimate claims as quickly as possible, plus early non-adversarial dispute resolution measures, are currently before the Law Reform Commission. This follows input from a wide range of healthcare stakeholders.

For Von Widdern, the human approach to protecting doctors and their patients is all-important. “Doctors need to know that to err is human and that apologies and empathy go a long way. We equally want patient redress, but we need to get there without throwing the baby out with the bathwater (i.e. impairing healthcare delivery),” he stresses.

Unique benefits

The company offers the only occurrence-based cover protected by South African laws and regulations. It regularly sponsors national conferences to help stabilise the litigation environment, practice guidelines in various medical societies, patient education leaflets, best practice consent forms, and several research fellowships to probe how, where and why things go wrong in medical practice.

“We see ourselves as connectors. Our philosophy is that doctors must manage their own risk but we want to create an environment where they’re able to do that, bringing stability to a stressed market. Where things go wrong, they are often the result of system failures. We therefore invest heavily in protecting private healthcare delivery”, adds Von Widdern.

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About EthiQal

EthiQal provides professional, affordable medical indemnity insurance that protects doctors against allegations of wrongful practices and when preventable errors have occurred. EthiQal is a pioneer of fair dispute resolution, offering the only real occurrence-based cover protected by SA laws and regulations. EthiQal is a division of Constantia Insurance Company, which has over 60 years of experience in the insurance industry.

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