



ICPA NEWS

ICPA celebrates victory in two recent challenges



The PSSA congratulates the Independent Community Pharmacy Association (ICPA) on its recent successes. It has been a long and tortuous path to arrive at this stage. Action on two problematic practices has been pursued for many years. These practices are (i) the imposition of penalties when medical scheme members exercise their right to choose a healthcare provider who is not a scheme designated service provider (DSP) and (ii) the vertical integration involving a company that owns both a pharmaceutical manufacturing company and a number of community pharmacies.

Many years ago, the Community Pharmacy Legal Trust (CPLT) was formed in order to raise and manage funds contributed primarily

by community pharmacists, and to fund legal action so that some of the actions that adversely affected community pharmacy could be pursued in court. A number of cases were lodged, with varying success.

Both matters in which the ICPA has been able to achieve a positive outcome have been a source of concern for many years. In particular they have been addressed in various fora by the Pharmacy Stakeholders Forum, whose members include the PSSA and ICPA. This includes both written and oral submissions by the PSSA and ICPA to the Competition Commission's Health Market Inquiry.

Council for Medical Schemes (CMS) Appeal Committee decision on penalty co-payments

Over the past 8 years, ICPA has been attempting to persuade the Council for Medical Schemes (CMS) to take action against medical schemes that impose a penalty co-payment on members who choose to get their medicines from non-DSPs. It has been a difficult process because on many occasions there was no response from the CMS.

In 2015, ICPA requested the CMS to declare this practice to be a non-desirable business practice, as well as the process by which some medical schemes appoint DSPs, wherein some providers who are able to fulfil the criteria used are excluded from the process. This request was denied, and ICPA initiated an appeal, which was supported by the Appeal Board, in 2016, but was never implemented by the CMS.

On 3 July 2020, the ICPA once again argued an appeal on the matter, in a hearing over which Judge Bernard Ngoepe presided. The Appeals Committee found in favour of ICPA, and ordered that

ICPA's successful 2016 appeal should be withheld. The CMS has been ordered to immediately proceed with the implementation of the 2016 decision of the Appeal Board. The registrar of CMS must give an update on the developments to ICPA, with a copy to be forwarded to the secretariat of the Appeal Board.

Note: The CMS has both an Appeals Committee and an Appeals Board. The Committee deals with complaints against decisions taken by the CMS and its registrar, and the Board will investigate when an aggrieved party complains about a decision made by the Committee.

ICPA has urged the CMS to speedily complete the requisite process to declare the closed DSP and penalty co-payments an undesirable business practice. This will restore the rights of patients to not only select their healthcare professional of choice but also ensure they do not encounter any unnecessary out of pocket payments.

High Court judgment against Clicks

In 2016, ICPA lodged a complaint with the Department of Health against various subsidiaries of Clicks and their holding company. The complaint was in essence that the holding company and its subsidiaries were acting in contravention of section 22A of the Pharmacy Act, Act 53 of 1974, and its regulations. This section places a condition of ownership, in that an entity having a beneficial interest in a community pharmacy is prohibited from being the holder of a direct or indirect beneficial interest in a manufacturing pharmacy. ICPA was disappointed in the eventual decisions of the Director General and Appeal Committee that addressed the matter, and took its complaint to the High Court.

On 3 June 2020, Acting Judge Sievers, in the Western Cape High Court, handed down judgement in the case, stating that Clicks has

contravened the Act and its Regulations. The Judge agreed that an entity having an interest in both a retail and manufacturing pharmacy would gain financially if, the manufacturing pharmacy's products are promoted by the pharmacist within the chain's community pharmacies, over other products.

This conflict could potentially result in the consumer not receiving the best quality product at the best available prices.

The Western Cape High Court set aside the previous decisions of the Director General and the Appeal Committee and has referred the matter to them for the consideration of a sanction against Clicks for the contravention of the Act and Regulations. Clicks have indicated that they are to appeal this decision.