



SIU_{SA}

STRIKING AGAINST CORRUPTION

SIU UPDATE ON THE MEDICO-LEGAL INVESTIGATION

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**HEAD OF SPECIAL
INVESTIGATING UNIT**

04 SEPTEMBER 2024

The State's preferred and trusted anti-corruption,
forensic investigation, and litigation agency

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OUTLINE

NO	ITEMS
1	About the SIU
2	Update on the Medico-Legal Investigation
2.1	Background and Mandate
2.2	National Department of Health Preliminary Findings
2.3	Provincial Departments of Health Preliminary Findings
3	Summary of General Observations, Patterns and Trends
4	Systematic Recommendations
5	Summary of Outcomes
6	Invoices

ABOUT THE SIU

1



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THE SIU'S LEGISLATIVE MANDATE

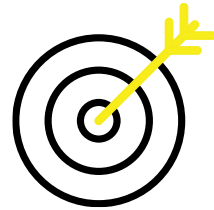
Empowering Legislation

Special Investigating Units and Special Tribunals Act, 1996 (Act no. 74 of 1996) ("SIU act").



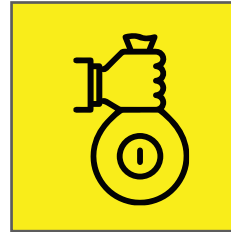
Vision

The State's preferred and trusted anti-corruption, forensic investigation and litigation agency.



Mission

We provide forensic investigation and civil litigation services to Combat corruption, serious malpractices and maladministration to protect the interest of the State and the public.



Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings



SIU Powers

- Able to subpoena, search and seize evidence, and interrogate witnesses under oath (once a proclamation has been issued)
- Institute civil litigation to recover state funds lost or to prevent future losses



Out of SIU Mandate

- Arrest or prosecute offenders
- Implement disciplinary actions
- Works closely with other relevant agencies where its powers fall short

SIU CRITICAL SKILLS AND EXPERTISE



**Forensic Data
Analytics**

**Forensic
Accounting**

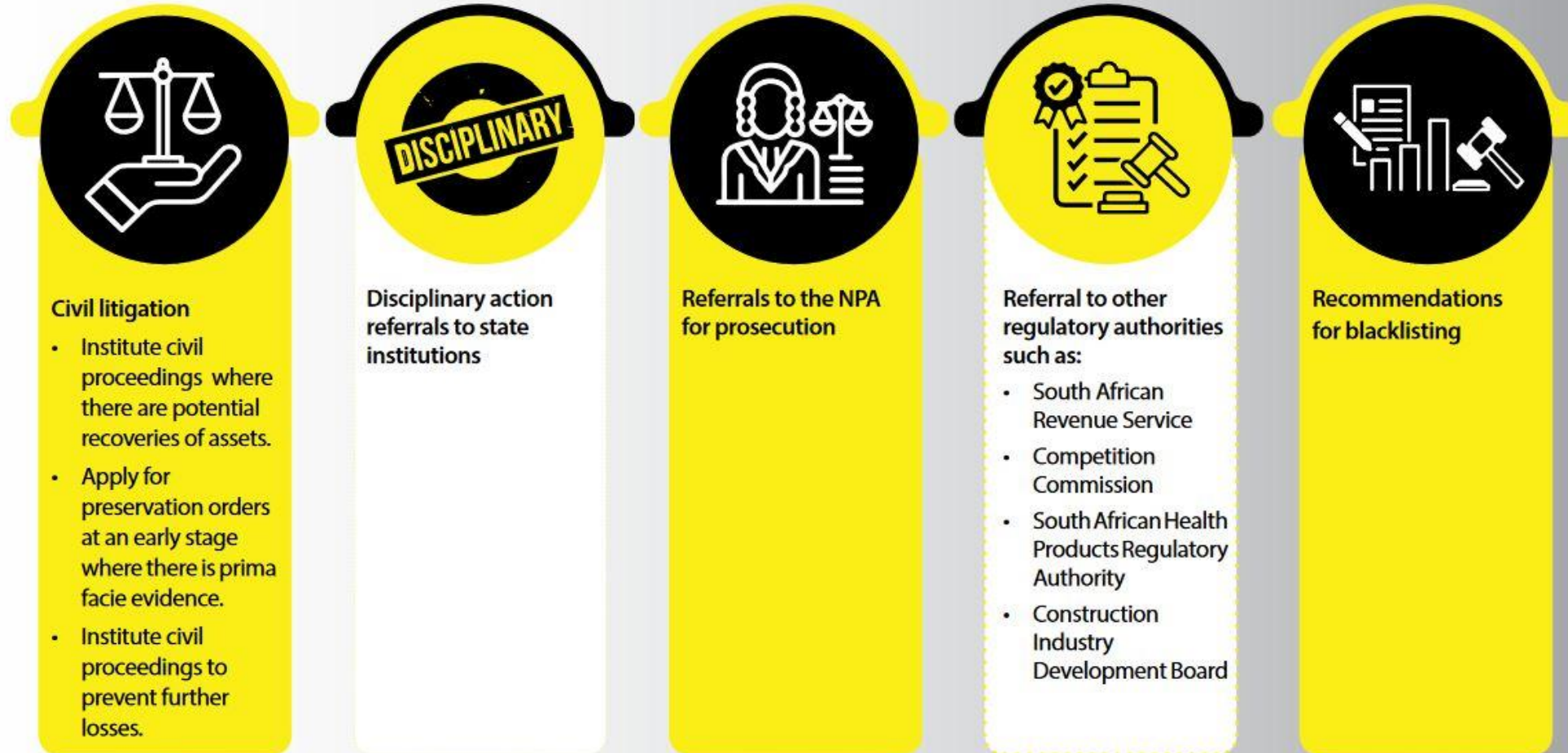
**Forensic
Investigation**

Civil litigation

Forensic Legal

**Cyber
Forensics**

SIU OUTCOMES & CONSEQUENCE MANAGEMENT



SYSTEMIC RECOMMENDATIONS

UPDATE ON THE MEDICO-LEGAL INVESTIGATION

2



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BACKGROUND AND MANDATE

BACKGROUND AND MANDATE



- ❑ Around 2015 the Health Sector experienced an explosion of medical practice litigation cases directed against health institutions as well as individual medical practitioners in both the public and private practice.
- ❑ The possible solutions were classified in three (3) broad areas:
 - Patient Safety;
 - Administrative solutions;
 - Legal solutions .
- ❑ However, the Department of Health noticed several claims which were completely out of synch and made no sense at all. There were claims that were evidently fraudulent.
- ❑ Just as an example, a claim was submitted in which the claimant demanded R70 million for a supposedly botched circumcision by a doctor in a hospital in Limpopo Province. On investigation of this claim, it was found out that no such circumcision was ever performed. It was found that the patient was actually treated for a very serious genital infection. The hospital actually saved his life.
- ❑ The Special Investigating Unit (“SIU”) was then called in to look into these very suspicious claims.
- ❑ In 2017, the SIU started their work by targeting provinces with the highest share of claims. These were in Gauteng and the Eastern Cape Provinces.
- ❑ By that time, the Eastern Cape contingent liability in respect of medico-legal claims amounted to R15,9 billion while in Gauteng the figure was R21,2 billion. This meant that should all the cases be won in court by the litigants, then the Department of Health would have to pay this staggering amounts.

BACKGROUND AND MANDATE



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General findings of the SIU:

- ❑ Most of the claims were targeting cerebral palsy, a condition in which babies develop some form of brain damage due to deprivation of oxygen during the process of birth.
- ❑ While it is recognised that cerebral palsy is a very debilitating and unfortunate occurrence to come from the healthcare system, it is a matter of very serious concern that it is abused by legal practitioners, due to sheer greed. The level of abuse was such that the SIU found that some of the claims were made on behalf of patients without their knowledge.
- ❑ Elderly people who are taking care of their grandchildren in the absence of their mothers, were tricked into signing the Power of Attorney to sue, whereas they were told that they were signing SASSA forms for child support grants. This simply means that legal practitioners or their scouts were masquerading as social workers.
- ❑ In the Eastern Cape, most of the medico-legal claims emanated from one Johannesburg-based law firm, Nonxuba Attorneys Incorporated. We are able to name the firm today because they have already been charged in a court of law. In a period of 15 years, i.e from 2012 to 2017 this law firm submitted 44 medico-legal claims to the tune of R497 million against the Eastern Cape Department of Health. Most of their claims as mentioned above were for children supposedly born with cerebral palsy.
- ❑ Cerebral palsy is not necessarily a homogenous condition. This means that the effects of the brain damage are not the same for all individuals because different parts of their bodies may be affected. However, the claims submitted by Nonxuba for each of nine children for whom claims were submitted were identical in that he demanded R15 million each. This was clearly suspicious and also indicated a lot of cut-and-paste on the part of this legal firm.
- ❑ Between 2010 and 2016, medico-legal claims increased from 46 to a tune of 529 claims in the Mthatha High Court alone.

BACKGROUND AND MANDATE



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- ❑ There is evidence of collusion between attorneys, touts, nurses and doctors in both the public and private healthcare.
- ❑ In some instances nurses stole medical records and illegally handed them over to attorneys. The attorneys would then apply through PAIA (Promotion for Access to Information Act) for the same records they are illegally in possession of. Naturally such records will not be found and the lawyer then claims fees from the Department for failing to provide records.
- ❑ Unfortunately there was also collusion involving some officials in the Office of the State Attorney, whereby out-of-court settlements for hefty sums were entered into without the mandate or even the knowledge of the department.
- ❑ Litigating attorneys would even sue for one case in two different courts. A variation of that is a situation where two different lawyers would claim for the same patient using identical details. Notably, whereas the patient is one person, the two attorneys will claim for vastly different amounts. One attorney would claim R7,5 million and the other R25 million for the same patient and same condition. This clearly indicates the arbitrariness of the claims.
- ❑ After these findings in the Eastern Cape, the National Health Council (NHC) then decided that the SIU investigates all provinces.
- ❑ The SIU submitted a motivation for a proclamation and a revised motivation for a proclamation in respect of the matter to the Department of Justice and Constitutional Development (“DOJ”) on 24 March 2020 and 15 September 2020 respectively. The SIU had previously assisted various Provincial Departments of health including, amongst others, the Gauteng Department of Health (through the the Gauteng Office of the Premier). Allegations pertaining to certain affairs of the National and Provincial Departments of Health and “public health establishments” as defined in the National Health Act No. 61 of 2003 (“T Health Act”) (collectively referred to as “the Institutions”) were to be investigated;

BACKGROUND AND MANDATE



- ❑ The matters were referred to the SIU by the Acting Chief Director (“CD”), Legal Services of the National Department of Health (“NDOH”), who informed the SIU that, whereas that the Gauteng, Eastern Cape and KwaZulu-Natal provinces constitute the most problematic in terms of medical negligence claims, it is symptomatic of a widespread endemic problem. Further matters were brought to the SIU's attention by officials of the provincial departments of health during consultations held between a member of the SIU and these officials;
- ❑ The President signed Proclamation No. R.74 of 2022 to investigate certain allegations of impropriety in connection with the affairs of the National Department of Health and Provincial Departments of Health, which was gazetted on 22 July 2022 and published in the Government Gazette No. 47055; and
- ❑ The Schedule of the Proclamation empowers the SIU to investigate “unlawful or improper conduct by claimants or applicants or their agents in the institution of civil action or civil application proceedings for relief against the Institutions in respect of medical negligence claims in a manner that was
 - (a) fraudulent; or
 - (b) conducted by or facilitated through the improper or unlawful conduct of
 - (i) employees or officials of the Institutions; or
 - (ii) any other person or entity to corruptly or unduly benefit themselves or any other person, and any related losses or irregular or fruitless”. The Proclamation period as per the schedule is January 2013 to 22 July 2022 and includes matters which took place before or after the aforesaid period but are relevant to, connected with, incidental or ancillary to matters or contracts investigated under the authority of the Proclamation.



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NATIONAL DEPARTMENT OF HEALTH



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NATIONAL DEPARTMENT OF HEALTH (“NDoH”)

Based on various engagements with the NDOH, the SIU established, inter alia, that:

- ❑ There are no medical negligence matters instituted directly against the NDoH;
- ❑ The NDoH is primarily tasked with policy developments and only gets involved in Medico-Legal matters when there are PAIA requests made to it or in instances where the Minister of Health is cited in some matters instituted against the Provincial Departments of Health; and
- ❑ The NDOH has implemented various ongoing strategic interventions to assist the provincial departments of Health in dealing with the scourge of medico-legal cases including the following:
 - 2015 Medico-Legal Summit;
 - Litigation Strategy
 - Project 141 of the South African Law Reform Commission (“SALRC”) including the State Liability Amendment Bill, 2018;
 - Gazetting of Health Facilities to provide future medical services;
 - Participation in the development of case law i.e. Public Healthcare Remedy, through Court cases;
 - Enlisting services of four (4) services providers through a Transversal Tender on Medico - Legal Claims;
 - Aided the SIU in the process of obtaining the Proclamation; and
 - Medico Legal Strategy Workshop (held on 24 & 25 April 2024).

NATIONAL DEPARTMENT OF HEALTH (“NDoH”)



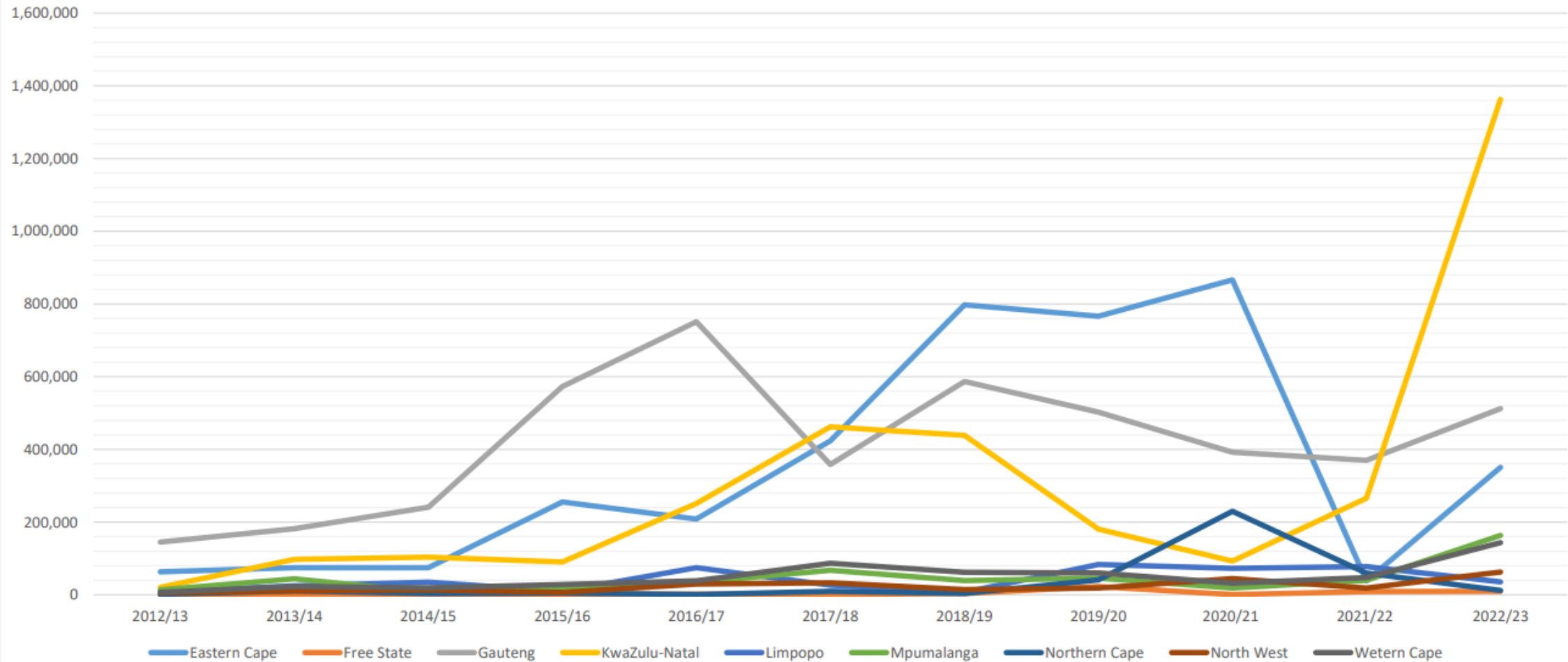
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Table 13: Payment trend on claims against health departments between 2017/18 and 2021/22

R'000	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Growth rates	
												2017/18- 2022/23	2023/24
Eastern Cape	63,359	74,775	74,868	255,561	208,503	423,263	797,434	766,399	866,144	38,683	350,684	-3%	339,928
Free State	440	700	196	1,728	1,560	376	3,600	22,655	584	8,831	9,863	72%	
Gauteng	145,071	181,802	241,085	572,815	751,082	358,230	586,453	502,148	392,000	369,697	512,203	6%	
KwaZulu-Natal	20,679	97,433	103,536	90,367	251,278	461,919	438,819	180,444	92,882	265,884	1,362,681	20%	
Limpopo	8,040	25,022	35,073	9,622	74,830	26,773	7,045	83,572	72,776	77,665	35,500	5%	
Mpumalanga	13,918	44,080	7,628	15,211	34,255	67,782	39,268	45,534	18,632	39,640	163,489	16%	
Northern Cape	1,437	10,705	3,828	4,844	823	9,493	3550	40,735	229,814	59,413	12,293	4%	
North West	5,502	10,896	13,246	6,422	29,539	33,274	14,450	18,912	44,856	18,539	62,708	11%	
Western Cape	6,928	23,015	19,272	28,073	38,381	86,984	62,140	60,140	31,990	47,642	143,549	9%	
Total	265,374	468,428	498,732	984,643	1,390,251	1,468,094	1,952,759	1,720,539	1,749,678	925,994	2,652,970	10%	

NATIONAL DEPARTMENT OF HEALTH ("NDoH")

Medico Legal Payment trends





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EASTERN CAPE PROVINCE



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EASTERN CAPE PROVINCIAL DEPARTMENT OF HEALTH

- ❑ Upon the publication of the Proclamation, the SIU obtained a list of 197 medico-legal claims against the Member of Executive Council (“MEC”) of the ECDoH to the value of about **R3.8bn** (130 matters valued at **R2.5bn** currently under investigation with the balance of 67 matters valued at R1.3bn still to be investigated); These are high-priority matters and receiving the necessary attention from the investigation team.
- ❑ These are complex matters and the investigation thereof cuts across various institutions like ECDoH, DOJ, OSA, Office of the Master of the High Courts, Sheriffs of the High Courts and various Banking institutions where Trusts are registered. ECDoH contingent liability currently stands at R22.3bn and with about 2500 medico-legal claims registered.
- ❑ The investigations are focusing on reducing the contingent liability of the ECDoH, by preventing pending matters from being struck-off the High court rolls and/or struck-out and/or default judgments being granted against the ECDoH, due to lack of evidence, and/or unavailability of medical records or failure by the Office of the State Attorney to file Discovery Affidavits, etc.
- ❑ In respect of about 63 pending court cases valued at approximately R1bn, the SIU collected evidence and shared the same with relevant stakeholders to defend such matters;
- ❑ The SIU identified duplicate high court cases wherein two ***Attorneys filed court papers in two different high courts for the same claimants*** to the value of **R76.3m**. The investigation is on-going and the preliminary findings are indicating that the 2nd and duplicate claim appear to be fraudulent and without a mandate (power of attorney) given by the Claimant. The investigation team is obtaining the relevant documentation/court case files/affidavits in support of our evidence collected, at this stage.



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EASTERN CAPE PROVINCIAL DEPARTMENT OF HEALTH (Cont..)

- ❑ A potential cash recovery of **R3.5m** (less damages claim for the Plaintiff) was identified. The child of the claimant had already passed away in this matter by the time that the High Court ordered an 'interim payment' by the ECDoH in favor of the Claimant. Upon receiving the interim payment, the attorney representing the Claimant returned the money to Norton Rose Fulbright (Counsel appointed to defend the claim on behalf of the ECDoH). The claim of the deceased child in respect of future medical expenses ceased, and only a claim for general damages in respect of the plaintiff and the child (as pleadings had already closed), remain outstanding.
- ❑ A potential cash recovery of **R3.5m** (less damages claim for the Plaintiff) was identified as a possible outcome;
- ❑ There are 44 matters which were instituted by Messrs.' Nonxuba Attorneys Inc (disclaimer), valued at about R497m, currently under investigation in some of which no Trusts were registered as per the court orders. In this regard, the SIU (Eastern Cape) has made the following referrals:
 - Evidence of criminality collected – Fraud, theft and contempt of court;
 - Referrals delivered at the NPA Offices in East London;
 - Evidence collected indicates transgressions of the Legal Practice Code of Conduct – Embezzlement/Theft of Trust funds;
 - Referrals made to the LPC Gauteng Provincial Office;
 - Evidence collected by the SIU also shared with the LPFF in order to re-imburse the affected claimants

EASTERN CAPE PROVINCIAL DEPARTMENT OF HEALTH (Cont..)

- ❑ The SIU has finalized its investigations in respect of 23 x Letters of Demand (LOD's) served by various attorneys on the ECDoH to the value of R298m.
- ❑ The investigation resulted in an **overall rand value of potential loss prevention**, (relating to **15 fraudulent medico-legal claims**) to the value of **R271.8m**. The LoD's were served on the ECDoH by the same attorney. The SIU investigations revealed that the Claimants mentioned in the LoD's never visited the Health Facilities, as indicated in the LOD's, and that there was no medical record/s of the Claimants at such facilities. Furthermore, the SIU discovered that the said attorney passed on in a m/v accident. These fraudulent claims were successfully removed from the contingent liability register of the ECDoH.
- ❑ The following **potential outcomes and/or highlights** are worth reporting:
 - The SIU team assisted Counsel and the legal team appointed by the LPC in the application for the Striking off the Roll of Attorneys of Mr Zuko Nonxuba of Messrs Nonxuba Attorneys Inc in the Western Cape Division High Court, under Case Number 13073/2018 – Arguments by the parties in respect of the matter have been made and the judgment by Court s reserved.
- ❑ SIU's intervention pertaining to a hold (for an amount of **R24 774 919.00**) incorrectly placed by the South African Reserve Bank (**SARB**) on the Attorney's Trust Account, which is currently under curatorship and the funds lawfully belonging to the claimants, is progressing well. SARB investigations relates to the contravention of the Regulations promulgated in terms of the Currency and Exchanges Control Act 90 of 1933 by the said Attorney, in that he, through fraud and deception, unlawfully exited funds from his South African Bank accounts into foreign bank accounts.

EASTERN CAPE PROVINCIAL DEPARTMENT OF HEALTH (Cont..)

- ❑ SIU's investigation in authenticating Mthatha High Court Orders in medico-legal matters resulted in engagement with the Acting Judge President of the EC Division of the High Courts on 17 May 2024, the purpose of which was to authenticate all court orders allegedly obtained and not to accept same on face value. The magnitude of fraudulent conduct identified in the cause of the SIU investigations, prompted this approach, and thus, no stone is left unturned!
- ❑ The investigation is ongoing, however, two court orders relating to this aspect may be questionable.
- ❑ Whistle-blower information received about 'touting' – 33 new matters identified for investigation – estimated value R395m.

The relevant provisions of the South African Legal Practice Council Code of Conduct made under the authority of section 36(1) of the Legal Practice Act, 28 of 2014 (as amended) ("the Legal Practice Code of Conduct"), relating to touting state as follows:

"Specific provisions relating to conduct of attorneys

18. An attorney shall –

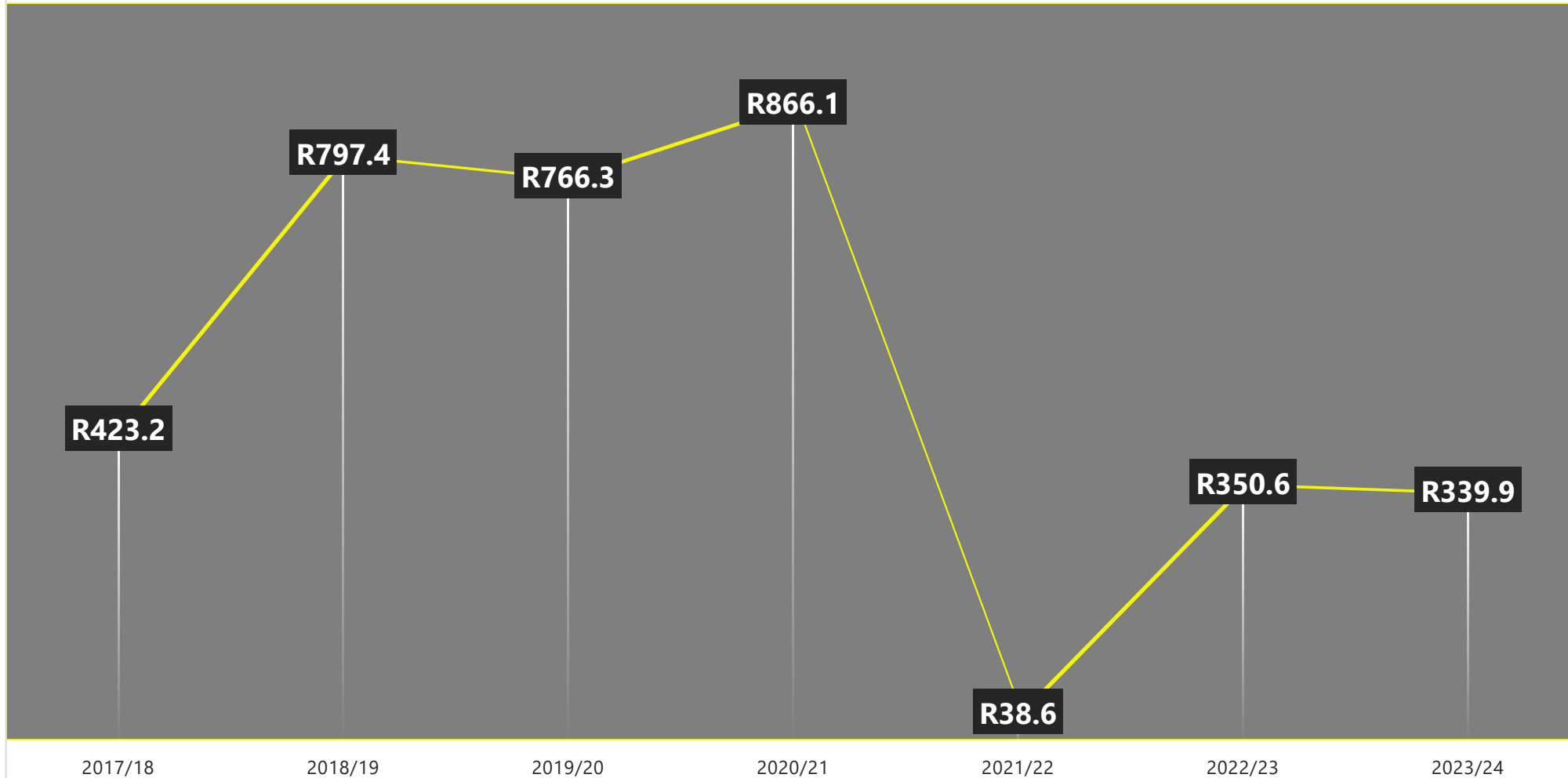
18.9 not act in association with any organisation or person whose business or part of whose business it is to solicit instructions for the attorney;

18.10 not buy instructions in matters from a third party and may not, directly or indirectly, pay or reward a third party, or give any other consideration for the referral of clients other than an allowance on fees to an attorney for the referral of work."

EASTERN CAPE PROVINCIAL DEPARTMENT OF HEALTH (Cont..)



MEDICO-LEGAL PAYMENT TRENDS (MIL)



EASTERN CAPE PROVINCIAL DEPARTMENT OF HEALTH (Cont..)



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The following **actual outcomes were achieved** since the inception of the investigation:

1. ADMINISTRATIVE REFERRALS TO THE LPFF

Focus Area	No.	Description	Value	Date Referred	Status Level of Official
Focus Area 3	60	Re-imbusement of Claimants	R370.1m	9/05/2024 6/06/2024 15/08/2024	LPFF to consider re-imbursing claimants, whose funds were embezzled by legal representatives.

2. ADMINISTRATIVE REFERRALS TO THE LPC

Focus Area 3	45	Fraud, theft and/or embezzlement of trust funds Contravention of the Code of conduct for Legal Practitioners -LPC Notice 198 of 2019	R279.5m	8&9/11/2023 01/02/2024 13/06/2024	LPC and LPFF are considering the evidence. Curator Bonis appointed to manage the attorney's Trust account Legal Counsel appointed to deal with a strike-off application in the Western Cape High Court.
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3. CRIMINAL REFERRALS

Focus area 3	60	Fraud, theft and/or embezzlement of trust funds Contempt of court	R370.1m	30/11/2023 23/01/2024 28/05/2024 23/08/2024	NPA Prosecutor is studying the evidence and busy drawing up a charge sheet. Adv. Cilliers is finalizing the indictment.
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4. RAND VALUE OF POTENTIAL LOSS PREVENTED

Focus Area 4	15	LOD's served by Nzabela Inc. on the ECDoH in which claimants does not exists	R271.8m	11/05/2023 11/09/2023 2/08/2024	CFO of ECDoH confirmed that 15 x LOD's to the value of R271.8m was removed from the Contingent Liability Register.
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FREE STATE PROVINCE



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FREE STATE PROVINCIAL DEPARTMENT OF HEALTH

- The SIU established that, during the Proclamation period, a total of 417 Medico-Legal claims were instituted against the MEC of the FSDoH to the value of about R4 949 251 581); according to the Contingent Liabilities Register
- Since there were no specific matters that was red flagged, we in conjunction with the Provincial Health Department identified 52 matters to investigate.
- Evidence pointing to wrongdoing and possible criminal conduct has been identified; in 5 matters
- Evidence of certain attorneys making use of touting (means conduct which draws attention, either verbally or by means of printed or electronic media, to one's offers, guarantees or material benefits that do not fall in the categories of professional services or items, but are linked to the rendering of a professional service or designed to entice the public to the professional practice);
- 18 referrals to the LPC were made against four attorney firms;
- 6 NPA referrals were made all relating to a certain Law Firm, the wife of the owner of the said Law Firm and another Law Firm for contempt of Court and fraud;
- 1 Matter was removed from the CLR amounting to a saving of R7.5 mil for the FSDoH;
- The SIU is busy preparing another 2 LPC referrals against two other attorney firms



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FREE STATE PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- All focus areas are still under investigation and no irregularities have been identified on the 28 finalized matters
- The team is in the process of finalizing various referrals to the LPC and the NPA based on the abovementioned findings
- There are potential matters identified which might further reduce the FSDoH CLR;
- Two matters were identified where the Department made payments to the claimant's attorneys, but the money was never paid to the claimant. One claim was R6 mil and the other R1,9mil. We are currently awaiting the "Right of Reply" from the firms involved.
- The Department of Health paid R103,425,101,72 in claims from 2013 to 2022.
- The Contingency Liability Register for Medical Negligence Claims has increased over the period,
- In all instances of wrongdoing identified the SIU will refer implicated attorneys and officials to NPA, LPC and the LPFF
- Investigation on other focus areas are ongoing.



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GAUTENG PROVINCE



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GAUTENG PROVINCIAL DEPARTMENT OF HEALTH

- The SIU has identified 2 450 medico-claims valued at R24 445 550 786.00 instituted against the GDoH;
- 611 medico-legal claims, out of the above 2 450, valued at R4 175 863 219.00 claims are currently under investigation;
- The SIU identified 40 matters involving claims submitted to the value of R496,650,009.00:
- Nine (9) out of these 40 claims are on behalf of children who are actually deceased, but the lawyers continued with the claims.
- Two of the 40 are actually employed whereas the lawyer has claimed for loss of earnings.
- One child actually had no Cerebral palsy whereas the claim was for this condition.
- nine claimants' attorneys withdrew when they realized that the SIU was investigating. The value of their claims was R149,304,625.00.
- one case was struck off the roll.
- one patient denied having instituted a civil claim.
- All in all an amount of R661 mil relating to 58 matters, inclusive of the above 40 matters, has been referred to the GDoH as a Potential savings to the GDoH which might result as a reduction to the departments CLR;



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GAUTENG PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- ❑ One (1) possible fraud and LPC referral, R50 mil, in a matter where plaintiff lodged a claim with RAF and also instituted civil claim against MEC for medical negligence. The plaintiff alleged that she instructed the attorney to lodge a claim against RAF as the child was hit by car and not against the GDoH. RAF confirmed that they received a claim. The SIU obtained RAF documents and is analysing the same.
- ❑ In other instances, GDoH issued instructions to file a notice of intention to defend the matters and the Office of the State Attorney did not acknowledge the receipt of the letter and there is no evidence whether the instructions were carried out or not. The investigation is ongoing to determine whether these instructions were carried out. 1 possible fraud and LPC referral, R25 mil, the plaintiff changed the attorneys after both attorneys informed her that there is no case of negligence against the MEC of GDoH. The SIU is gathering information from both attorneys to determine whether the withdrawal as attorney of record was because there was no negligence on the part of the GDoH.
- ❑ One (1) possible fraud and LPC referral, for an amount of R2 539 000.00, in which a plaintiff lodged a claim with Road Accident Fund ("RAF") and also instituted a civil claim against MEC for medical negligence. RAF already paid the plaintiff. The SIU obtained RAF documents and is analysing the same.



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GAUTENG PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- ❑ One matter where the State Attorney raised prescription and non - compliance with the provision of section 3 of Act 40 of 2002. The plaintiff sought an order condoning non - compliance with the provision of section 3. The application was unopposed as there was neither grounds nor instruction to oppose. The court granted an order with costs on a party and party scale. Investigation is ongoing to determine why the GDoH did not oppose the application.
- ❑ The SIU is reviewing 23 LoD with a combined value of R109m, re the EFF and Ian Levitt acting on behalf of the plaintiffs for forced sterilization. The matters have been defended however the defendant has not filed a Plea. The plaintiffs' attorney requested medical records and is still waiting for the records. Summons were also issued.
- ❑ One (1) possible fraud and LPC referral, for an amount of R244 000,00 in which a plaintiff approached the attorney to obtain advise on how to claim insurance for her deceased sister, not civil claim against the MEC GDoH.
- ❑ In all instances of wrongdoing identified the SIU will refer implicated attorneys and officials to NPA, LPC and the LPFF
- ❑ The investigation is still on ongoing.



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KWAZULU-NATAL PROVINCE



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KWAZULU-NATAL PROVINCIAL DEPARTMENT OF HEALTH

- ❑ The SIU identified 2 440 matters valued at R29 140 032 315.42 instituted against the KZNDoH.
- ❑ The SIU has finalized investigations relating to 108 matters valued at R2 416 284 800.00.
- ❑ Out of the 107 matters finalized, 76 relate to instances where claimants are actually deceased and the value is R1, 715,500,250.00. This money has been removed from the contingent liability.
- ❑ One attorney was found to have submitted a claim to the value of R16 million after the death of the child. Significantly in court, the lawyer was claiming for future medical care based on private hospital rates and loss of amenities of life. This one will be referred for criminal prosecution.
- ❑ The SIU has made 4 referrals to the NPA and 3 LPC against the attorneys and private individual who were found in possession of stolen medical records.
- ❑ All in all a loss of R2 417 284 631 has been prevented resulting in a decline in the matters on the KZNDoH CLR;
- ❑ The Investigation is ongoing;
- ❑ In all instances of wrongdoing identified the SIU will refer implicated attorneys and officials to NPA, LPC and the LPFF



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LIMPOPO PROVINCE

LIMPOPO PROVINCIAL DEPARTMENT OF HEALTH



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Number	Activity	Preliminary Outcomes/ Highlights
1	Number of claim submitted to the department	1600 valued at R14 billion
2	Number and value of cases currently under investigation	303 valued at R 5, 267, 289,943
3	Total amount paid by the department towards Medico-Legal claims	R 248, 390, 884. 66
4	Number and value of cases finalized	63 valued at R 139, 753, 944.09
5	Number of cases referred to the department for removal from CLR	26 claimants valued at R 657, 291, 825.00 were confirmed to be deceased
6	Monies held in trust by plaintiff's Attorneys	<ul style="list-style-type: none"> • One Plaintiff Attorney paid claimant R240, 000.00 after he withheld the money since 2016. • One plaintiff's Attorney paid R 33, 000.00 after overcharging a contingency fee. • SIU is considering the LPC referral in both matters

PROVINCIAL DEPARTMENT OF HEALTH (Cont.)



Number	Activity	Preliminary Outcomes/ Highlights
7	Record keeping	The SIU identified the matter valued at R13, 350, 428.00 which the LDoH failed to defend due to non availability of the claimant's medical records. Investigation is ongoing.
8	PAIA applications	The department paid the amount of R74. 617. 75 for the medical record that was available at the hospital. The SIU is considering disciplinary action.
9	Number and value of cases unfinalized	689 valued at R 2, 732, 710, 053.



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MPUMALANGA PROVINCE



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MPUMALANGA PROVINCIAL DEPARTMENT OF HEALTH

- ❑ The SIU received a total of 902 matters (with a combined value of R10 115 964 997.77) instituted against the MDoH. Of these 902 matters, 549 were medico-legal claims with a total value of R5 196 857.32.
- ❑ 33 matters to the value R3.9 mil are currently under investigation.
- ❑ The SIU found that about 11 matters were duplicates i.e. same Lawyer lodging claim at various institutions such as district clinics, provincial hospitals and the MDoH;
- ❑ The team had written to both the Registrar of the High Court in Mpumalanga to assist with all case files filed under medico-legal.
- ❑ The team also identified cases of touting relating to matters under investigation by a certain Law Firm;
- ❑ The SIU issued notices to various banks requesting bank records including Trust accounts of a certain Law Firm and the individuals identified as a touters for further investigation. Some of the bank statements were already collected and the team is analysing the same.



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MPUMALANGA PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- ❑ The following potential outcomes have been identified:
 - Referrals to the LPC for contravention of various Acts and misconduct under the LPC;
 - Referrals to NPA for possible fraud;
 - In respect of duplicate claims, the SIU intends to secure/conclude Acknowledgements of Debts against the identified Law Firm(s). However, payment vouchers are outstanding from the Department and the investigation has served 5(2)(b) and (c) notices to various banks requesting trust and business accounts information on the law firm in order quantify the claim;

- ❑ Investigations are ongoing.



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NORTHERN CAPE



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- ❑ The SIU has identified 114 medico-legal claims valued at R1 564 225 626.46 instituted against the NCDoH;
- ❑ Out of the 114 matters, 42 matters were identified as possible fraudulent claims, and have been prioritized:
- ❑ The SIU identified Three (3) potential referrals to the LPC, to the value of R128 700 000.00, relating to touting and misconduct by Attorneys, evidence suggests that the plaintiff's attorneys had touts who were recruiting claimants who specifically gave birth to children born of cerebral palsy – investigation ongoing.
- ❑ Four (4) potentially fraudulent matters were identified, to the value of R169 400 000.00, in which plaintiffs/claimants interviewed and informed the SIU that they either never signed powers of attorney or did not give consent to their attorneys to lodge claims against the NCDoH - investigations ongoing with a possible NPA and LPC referrals;
- ❑ Ten (10) matters are classified as archived- where attorneys have registered cases against the Department of Health, however, when called to provide the Power Attorney to act on behalf of the claimants, the Attorneys file a Notice of Withdrawal as Attorney of Record. These matters then remain dormant until an application is done to court to have the matter archived.
- ❑ One matter has been closed as there were no adverse findings, the claim was valid and has been settled.



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NORTHERN CAPE PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- ❑ The SIU identified further matters to the value of R90 200 000.00 in which evidence suggests that hospital files/medical records were stolen and sold to the plaintiffs' attorneys - investigations ongoing with a possible DC, NPA and LPC referrals;
- ❑ There were various irregularities identified in relation to the manner how attorneys handled monies paid by the department towards Medico Legal claims. An example is a matter identified wherein a claim was settled out of court of an amount of R18 700 000.00. The claimant only receives R6 000.00 per month from the attorney. Investigation is ongoing. Affidavit and supplementary affidavits deposed to by the claimant.
- ❑ Investigations on other focus areas are ongoing - fraudulent activities and misconduct identified which will lead to potential disciplinary proceedings and criminal matters being referred to the LPC and NPA. Investigations are at an advanced stage.
- ❑ Investigations other are ongoing.



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NORTH WEST PROVINCE



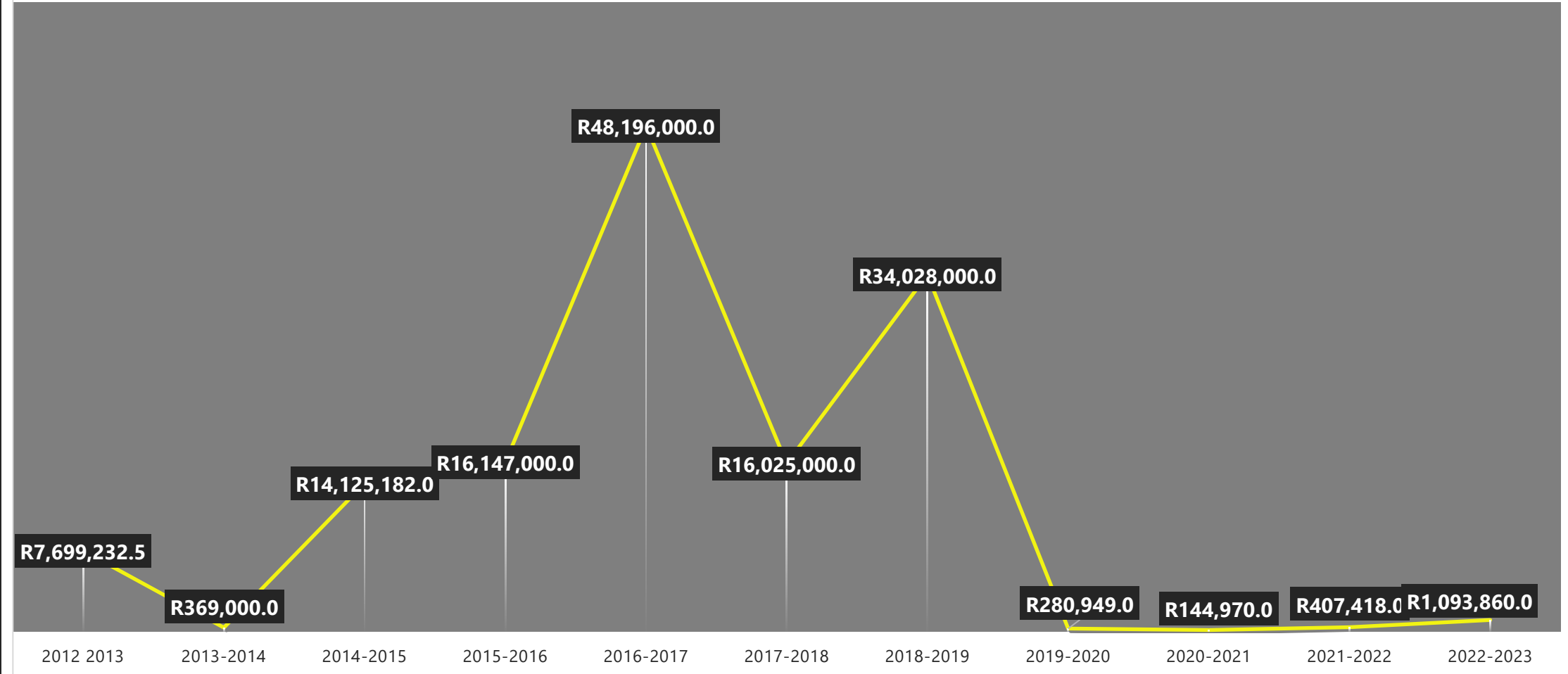
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STRIKING AGAINST CORRUPTION

NORTH WEST PROVINCIAL DEPARTMENT OF HEALTH

- ❑ The SIU identified a total of 230 medico-legal matters to the value of R 1,589,262,939 instituted against the NWDoH;
- ❑ 32 medico-legal matters, of the above 230 matters, to the value of R222 mil are currently under investigation;
- ❑ Two (2) matters were identified, from the above matters, to the value of R32 mil in which monies were not paid into Trust Accounts as per the Court Orders – possible NPA and LPC referrals to be considered;
- ❑ There were 10 matters finalized with the value of R31 mil – no irregularities identified;
- ❑ The SIU found three cases where R45 million was not deposited into Trust Accounts for patients as required by court orders. Instead, the money was placed into attorneys' trust accounts since December 2018, accruing interest, rather than establishing a Trust Account for the claimants. This matter will be referred to the LPC for professional misconduct, and to the NPA for criminal prosecution.
- ❑ Various potential irregularities were identified in relation to matters settled and payments made to the claimant's Attorney's Trust Accounts:
 - The SIU discovered a case in which a claimant's attorney received R14,450,000.00 and only paid the patient R370,000.00. The money was deposited into the attorney's account in February 2021, but the attorney only paid the patient in May 2022, after a year. The investigation revealed that the attorneys acted fraudulently and in contempt of court.
- ❑ Investigations are ongoing.

NORTH WEST PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

MEDICO-LEGAL PAYMENT TRENDS





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WESTERN CAPE



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WESTERN CAPE PROVINCIAL DEPARTMENT OF HEALTH

- According to the information provided by the NDoH for 2015/16 to 2020/21), there were 409 medico-legal claims instituted against the WCDoH to the value of R2 852 588 055.99.
- During 2018, the SIU was approached by the WDoH, regarding alleged fraudulent medical negligence claims submitted by a certain Law Firm on behalf of various claimants;
- The WDoH identified 33 fraudulent birth injury claims in the contingency liability register to the value of approximately R409 million. These cases include allegations of fraudulent medical negligence claims submitted by Nonxuba Incorporated Attorneys on behalf of various patients. Fortunately, nothing has been paid by the Department and the matters are before the court.
- Criminal cases have been registered in East London, Gauteng and the Western Cape against the identified Law Firm and/or its owner. In respect of the criminal case registered in the Western Cape, 33 matters were referred to the South African Police Service ("SAPS") and are currently being investigated by the Directorate of Priority Crime Investigations ("DPCI") under Cape Town Central CAS 425/03/2019. The SIU is cooperating with law enforcement and assisting counsel dealing with these matters.
- During a meeting between the SIU and a WCDoH official on 17 August 2022, the WCDoH confirmed (regarding the above) that no payments were ultimately made in favour of any of the 33 claims registered with the SAPS. The 28 claims referred to in the revised motivation for a Proclamation form part of the abovementioned 33 claims;
- The SIU observed that during the Proclamation Period, spanning the financial years 2015/16 to 2021/22, there were between 203 and 372 active medico-legal claims each year. During the same period between 21 and 51 claims were settled each year and the total value of the claims settled during the period 2015/16 to 2021/22 is R468,1 million.
- Ongoing consultations with the WCDoH

SUMMARY OF GENERAL OBSERVATIONS, PATTERNS AND TRENDS

3



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EASTERN CAPE PROVINCE

❑ The following Patterns and Trends were identified relating to the Focus Area dealing with monies held in Trusts by Plaintiff Attorneys:

- Plaintiff's attorney handling the court proceedings on his own accord and claimants are unaware of the progress, outcomes and/or court orders handed down. This appears to be deliberately done to create the subsequent opportunity, space and time - embezzlement of payouts and/or trust funds;
- OSA enter into settlement agreements without having all the medical records at hand, without verifying the authenticity thereof, no consultation/s conducted with relevant medical personnel and having a lack of understanding/interpretation of medical records. Workload seems to be overburdening to them, as well; However, the establishment of the Specialized Litigation Unit (SLU) in the ECP has remedy this practice by implementing administrative processes between the OSA and the ECDoH when dealing with potential settlement/s requests.
- 'Clawback clause' is not consistently included in settlements and/or court orders;
- Master of the High Court is not sighted in the court orders or provided with a copy of the court order/s, yet they are the custodians of Trusts;
- Interim court applications and payment orders handled by Plaintiff's attorney without the plaintiffs being aware of such applications and the reasons and/or intended purpose of the claim. The amount (quantum) claimed for is also unknown to the plaintiffs and monies received by plaintiff's attorney are not paid over to the plaintiffs and/or used for the intended purpose/s, claimed for;
- Verification by the SIU – claimants and children exists, apart from a few who have passed away during and/or after court proceedings.
- Living conditions of the plaintiffs and their children are appalling and poverty stricken as most of them are unemployed and depend on SASSA grants;

EC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- Children/claimants continue to strain the overburdened State Healthcare System by requiring medical care, post-payment, from clinics and hospitals, compounded by inadequate specialized treatment available at remote state hospital facilities;
- Lack of adequate care with the only existing specialized facility (NGO), for children with these types of medical conditions, situated in Gqeberha (EC);
- Lack of electronic caseline system at the EC Department of Justice – High Court rolls in the EC not interlink which allow attorneys to file the same matter at different High Courts;
- Inability of the LPC to act swiftly upon complaints against unscrupulous attorneys;
- Lack of capacity at the LPC and the LPPF to investigate matters speedily and re-imburse claimants;



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EC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- ❑ SIU has identified numerous cases where the living conditions of the claimants—namely the plaintiffs and their children—remain appalling and impoverished, despite receiving compensation from the Department through their lawyers for medical negligence claims. Many of these claimants are unemployed and rely on social grants from the South African Social Security Agency (SASSA) for their livelihood. Some households are constrained to a single-room "rondavel" without appropriate railing or ramps to assist disabled children, resulting in inadequate living conditions and insufficient caregiving. Additionally, the SIU found that these children continue to place a burden on the already strained state healthcare system, as they still require medical care from state clinics and hospitals despite the compensation received for their medical negligence claims.
- ❑ A notable instance of such matters involves cases where the Department, between 2018 and 2021, paid R373,850,748.04 to Nonxuba Incorporated for 22 claims. However, several years later, an inspection by the SIU revealed that none of the claimants had Trust Accounts registered in their names as was ordered



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Rondavel on the Molose
homestead

**Rondavel on the
Molose homestead**





**Land layout of the
Molose homestead**



**Land layout of the
Molose homestead**



**Land layout of the
Molose homestead**



Side door to the main house



Avile Molose in the
main house



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FREE STATE PROVINCE



- The theft of medical records has been discovered in the Free State, along with attorneys withholding funds intended for claimants. It was found that in most instances, the hospitals did not have the medical records. This problem involved two specific hospitals in the province.



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GAUTENG PROVINCE



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GAUTENG PROVINCIAL DEPARTMENT OF HEALTH

- Lack of communication between the Office of the State Attorney and GDoH for example, plaintiffs proceed with default judgements because there were no instructions to file notice of intention to defend.
- Matters are dormant and there is no instruction to request the court to archive dormant matters.
- Attorneys are withdrawing as attorney of records after the SIU issued section 5(2)(a) notice
- No proper record keeping of medical records



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KWAZULU-NATAL PROVINCE

- Office of the State Attorney ("OSA") have settled matters without authority.
- Strike out applications are not timeously monitored and attended to.
- Attorneys representing OSA fail to timeously appoint Counsel and Expert witness that could assist the Department in their matters in court
- Attorneys submit PAIA applications through court and not the hospital. A court order is granted against the Department, once this is obtained the Attorneys do not continue with the claims. In many instances the records related to the PAIA application are missing.
- Lack of efficient record keeping system at hospitals.



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LIMPOPO PROVINCE



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LIMPOPO PROVINCIAL DEPARTMENT OF HEALTH

- No synergy between the department and Office of the State Attorney
- Poor record keeping
- No proper monitoring of PAIA applications
- The department is making use of the spreadsheet as Contingent Liability Register
- No proper monitoring of the dormant/closed/withdrawn matter by the department
- Most LOD are dormant. The department has advised the SIU that they have since removed the 599 LOD to the value 6 billion from the CLR. The register only record the summons.
- Most matters that are on the court roll are dormant/closed/withdrawn and some claimants are deceased



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MPUMALANGA PROVINCE



- None identified thus far – investigation is ongoing.



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NORTHERN CAPE PROVINCE

NC PROVINCIAL DEPARTMENT OF HEALTH

- ❑ Law firms acting without Authority - some Powers of attorneys in court files appear to be forged/fraudulent by the claimants' attorneys. During the investigations and interviews with the claimants, various claimants informed the SIU that they neither never signed the said powers of attorneys nor consented or instructed the said attorney to represent them in their medico-legal claims against the department;
- ❑ Lack of consistencies in the Northern Cape department of health in the managements and/or processing of Medico-Legal claims i.e. manual vs electronic case-line system;
- ❑ Contempt of Court by law firms – Two instances identified in which law firms failed to execute Court Orders relating to, amongst others, the registration of Trusts on behalf of the claimants in line with the said Court Orders;
- ❑ One Claimant is underpaid on a monthly basis an amount of R6000 from an R18 700 000, 00 settlement amount paid by the Northern Cape Department of Health to the claimant's attorneys trust bank account.
- ❑ Some claimants are indigent and their level of literacy was not sound enough to understand and appreciate the legal consequences of Trusts being registered and administered on their behalf.

NC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- ❑ Some claimants also did not understand and appreciate the legal and financial consequences of signing powers of attorneys to their attorneys as well as that touting is an unethical conduct by legal practitioners/attorneys.
- ❑ Some attorneys abuse and take advantage of claimants' insufficient level of legal understanding of the medico-legal claims process and its legal and financial ramifications.
- ❑ Some attorneys intentionally withheld millions of moneys paid into their trust bank accounts from the department of health in order to benefit on the annual bank interest accrued to their trust bank accounts annually.
- ❑ Archived or dormant matters remain on the court roll for years without being updated/removed from the department's CLR or re-enrolled on the Court roll. This causes the PDoH's CLR to remain high;
- ❑ Attorneys from different Provinces are targeting patients in the Northern Cape
- ❑ Use of touts and collusion with hospital staff to obtain patient files and information
- ❑ Attorneys fabricate claims or use information pertaining to a different child in the claims against the Department of Health, yet the child of the Plaintiff is healthy.



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NORTH WEST PROVINCE



- Various potential irregularities were identified in relation to matters settled and payments made to the claimant's Attorney's Trust Accounts:



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WESTERN CAPE PROVINCE

WC PROVINCIAL DEPARTMENT OF HEALTH



NO	OBSERVATION	DESCRIPTION
1	Archiving of documents of the Office of the State Attorney ("OSA")	Our observation indicates that the OSA does not maintain a proper filing/archiving system, leading to disorganisation and difficulty in retrieving documents. This issue may affect the efficiency of their operations.
2	Electronic systems/programs of the OSA	The OSA lacks electronic systems to record matters assigned to attorneys. This absence makes it challenging to track statistical data. Manual systems make it very difficult to retrieve specific information or compiling reports and can lead to inconsistencies.

SYSTEMATIC RECOMMENDATIONS

4



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EASTERN CAPE PROVINCE

- ❑ In the course of investigations, to bring the anomalies, pitfalls, injustices or inconsistencies found in the Eastern Cape Department of Health (“the Department”) investigation relating to medico-legal matters, and regarding its operation systems or policies, to the attention of the government so that front-line decision-makers take account of the SIU findings, systemic recommendations needed to be brought to the fore, and hence this brief.
- ❑ Therefore, the systemic recommendations enumerated herein below are suggested to the Department with a view to possible implementation.
 - **Clinic card(s)**
 - a) The expecting mothers to be admitted at health institutions for delivery must be required to provide Clinic Cards (Road to Health Cards) from their respective antenatal healthcare clinics that they had been attending. This will allow the healthcare institution admitting the mother to ascertain if the mother did not have underlying sicknesses and whether the mother was attending the clinic for requisite antenatal medical checkups.
 - b) Observations: Clinic Records relating to antenatal/prenatal care are not always provided by admitted expecting mothers to healthcare institutions for delivery.

EC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)



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- **The Ambulance Register**

- a) The Ambulance Services of the healthcare institution or any ambulance services must always keep and provide records on how expecting patients or any patient admitted to any healthcare institution was brought to the healthcare institution concerned, and from exactly where and at what time was such patient picked up from the place in question

- **Maternity Ward Daily Register including Confirmation of Mode of Transport by the Patient(s)**

- a) The Maternity Ward Register must record and confirm the mode of transport as to how the patient was brought to the public health institutions especially when a private mode of transport was used. The registration details of the motor vehicle and the driver who brought the patient to the healthcare institution for delivery must be kept.

- b) Observations: Expecting mothers brought by private modes of transport to public healthcare institutions always state that they were brought to the institutions by ambulances although this is not always the case. In some instances, ambulance records are removed from the hospital records for the patients not to disclose the places where they were picked up by ambulances.

▪ **The Public Health Institution Register**

- a) The public healthcare institution must maintain a Register of all prenatal care patients who are admitted at the institutions with details of the time, date, condition at arrival; when attended for medical care and medication administered; the vitals upon arrival; complaints by the patient, if any; procedure before, during, and after delivery, manner of delivery (if a cesarean section operation was undertaken, when was a decision to do so made, by whom, and was the condition of the mother and the child after delivery, vitals during and after delivery (etc).
- b) This register must also be archived electronically under the name of each patient. Patients must never be allowed to take home hospital records as this is the property of the public healthcare institution concerned, and it is a criminal offense punishable by law to remove the clinical records from the healthcare institution.
- c) Observations: Clinical records are constantly stolen by patients at public healthcare institutions. Attorneys representing these patients after institute applications to obtain these records when they know they are no longer there and have been unlawfully removed.

▪ **Maternity Ward Daily Incident Reports Register on Patients from admission pre-natal and post-natal**

- a) This register must be developed and kept by the healthcare institution to record in detail all incidents that may extract possible allegations of malpractice and/or medico-legal negligence by officials of the healthcare institutions on any particular day.

▪ **Electronic Records keeping and archiving system**

- a) The present archiving system of the public healthcare institution is partly electronic and also manually maintained by in each province.
- b) The system is designed considering the needs and requirements of that particular healthcare institution.
- c) In other healthcare institutions, the electronic archiving ad-hoc system may not be existing at all; the patient records and files are just placed on the floor in the offices at such public healthcare institutions.
- d) How the files are kept could even compromise the privacy of communications/interactions between the doctors of the public healthcare institutions and the patients which is protected by the principle of doctor-patient privilege.
- e) The SIU submits and recommends that it is imperative that the public healthcare institutions develop and maintain a logical and advanced but user-friendly and proper electronic file management system and archiving for healthcare institutions with a view, among others, to enhance the security of state information; enhance the principle of doctor-patient privilege; and advancement of technology consistent with the ideal of the Forth/Fifth Industrial Revolution.
- f) Besides security, this system must, among others, include folders that reflect the file index; the file reference number; the details of the expecting patients/mothers; the prenatal clinic that was attended by the mother; the section on the details relating to prenatal and postnatal care; the file notes section etc.

EC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- g) The dictates of the Protection of Personal Information Act 3 of 2013 ('POPIA'); the Electronic Communications and Transactions Act 25 of 2002; the Archives Act 6 of 1962 as well as the Records Management Regulations and other legislative prescripts must be complied with.
- h) The POPIA requires that the records that were originally created in electronic format are regarded as original versions of that document and can be stored as such. Where a copy has to be retained, the record can be retained either electronically or as a hard copy. Naturally, where documents are retained in electronic or digital format, there are security requirements that must be complied with to preserve the integrity of those records.
- i) The following is required of all institutions to protect their electronic records in terms of the POPIA:
- Store them on a medium that's appropriate for long-term retention;
 - The electronic repository must have sufficient storage capacity;
 - Archives and backups must be securely maintained;
 - Separate records with particulars of historical archives and backups must be kept;
 - Documented technical and organisational measures to safeguard against unauthorised access, theft, loss or intentional or accidental damage, destruction and falsification must be deployed; and
 - systems to facilitate the discovery of any attempted or actual changes, falsification or unauthorised access must be implemented.



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EC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)



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▪ **Special Power(s) of Attorney**

- a) Legal practitioners who seek public healthcare records in respect of patients at public healthcare institutions must always be required to provide the healthcare institutions with the Special Power of Attorneys and the copy(ies) of the Identity Document(s)/Valid Passport(s) of the client(s) concerned.

▪ **Employment of qualified medical experts at public healthcare institution**

- a) For the “national public healthcare defense” to be properly raised by the public healthcare institutions and be sustainable, public healthcare institutions must be effectively capacitated through the employment of the following crucial and critical personnel at each Clinical Support Component of the Cerebral Palsy Rehabilitation Unit(s)/ Cerebral Palsy Centers of Excellence:

- Occupational therapy;
- Physiotherapy;
- Speech and language therapy;
- Audiology services;
- Dietetics services;
- Psychology services;
- Prosthetics and orthotic services;
- Pediatric services;
- Dentistry services;
- The provision of therapies, treatment, assistive devices and appliances which are to be provided to the claimants’ children at no cost to parents.

EC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)



SIU SA
STRIKING AGAINST CORRUPTION

▪ **Litigation Against the Public Healthcare institutions**

Legal practitioners who institute claims against public healthcare institutions on behalf of their clients must be required to:

- a) Provide Special Power(s) of Attorney in respect of all medico-legal claims instituted against the healthcare institutions or the state in their Particulars of Claim.
- b) Provide the Birth Certificate with the Identity Number of the child and that of the parent.
- c) Citing of the relevant Master of the High Court as the interested party to the proceedings, if the claims relate to minor children.

▪ **Directives must be issued by the office of the Judge President that:**

The Eastern Cape Provincial Division must develop and maintain a Provincial Electronic Court Case Register (Caseline Management System) for the recording of all medico-legal claims within the Eastern Cape Province. This will remedy the duplication of matters and/or preventing multiple registering of the same claim at different High Courts.

The offices of the State Attorney must be required to:

- a) Urgently raise the "National Public Healthcare defense" in terms of section 4 read with sections 5 and 6 of the National Health Insurance Act 20 of 2023 ("the NHI Act") in all matters relating to medico-legal claims pending before the Courts, and where the state is being sued, with a view to decrease the contingent liability of the state.
- b) On any possible claims involving children with infarcts related to cerebral palsy children with quantum sounding in money, "the clawback clause" be raised.
- c) That Directives be issued by the office of the Solicitor-General in consultation with the Department of Justice & Constitutional Development (through the Office of the State Attorney) on the raising of the "National Public Health-care defense."

EC PROVINCIAL DEPARTMENT OF HEALTH (Cont.)

- b) On any possible claims involving children with infarcts related to cerebral palsy children with quantum sounding in money, "the clawback clause" be raised.
- c) That Directives be issued by the office of the Solicitor-General in consultation with the Department of Justice & Constitutional Development (through the Office of the State Attorney) on the raising of the "National Public Health-care defense."

- **The involvement of the Departments of Public Works and Infrastructure and Social Development**

In respect of the alterations of the homes of children with cerebral palsy/hypoxia, to enhance effective and efficient mobility, expenses most often include the alteration of the homes of these children through various constructions which often include the installations of ramps and paving and landscaping, among others, to accommodate wheelchairs.

It is recommended that the Department of Public Works and Infrastructure be involved in the assessment and construction of home for cerebral palsy children should such alterations be required.



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FREE STATE PROVINCE

FS PROVINCIAL DEPARTMENT OF HEALTH



- None identified thus far – investigation is ongoing.



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GAUTENG PROVINCE



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GAUTENG PROVINCIAL DEPARTMENT OF HEALTH

- ❑ Upon review of the systems currently utilized by the GDoH, it was established that the Department does not have an adequate system and standard operating procedure in place to effectively manage medical negligence claims. It is therefore imperative for the Department to implement a standard operating procedure (“SOPS”) as well as an electronic health management system (“HMS”). The standard operating procedure will outline the process to be followed from the time a letter of demand is received by the Department until the finalization of the matter.

- ❑ The GDoH data must contain the identity number and/or date of birth of the plaintiff as this will assist the department to request confirmation whether the plaintiff is alive or not.



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KWAZULU NATAL PROVINCE



SIU
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AGAINST CORRUPTION

KZN PROVINCIAL DEPARTMENT OF HEALTH

- ❑ **Health Management System (“HMS”)**: KZN DoH does not have an adequate system in place to manage medical negligence claims. It was recommended that they implement the Health Management System (“HMS”), which is being utilised by the Eastern Cape Department of Health and being implemented in the Free State and Western Cape Provinces.

- ❑ **Claw Back Clause**; The SIU has recommended that in all matters where judgments relating to Cerebral Palsy claims are obtained, KZN DoH must ensure that the court order includes a claw back clause. The claw back clause will apply upon early death of the minor child allowing KZN DoH to recover monies paid in respect of future medical expenses to avoid undue enrichment on the part of the plaintiff.

- ❑ **Trust Deeds** : The SIU has also made a systematic recommendation in relation to Trust Deeds. In all matters where judgments relating to cerebral palsy claims are obtained, it is peremptory that the Court Orders include that a Trust Deed be opened by the attorneys of record in consultation with the office of the Master of the High Court or with the Court.



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STRIKING AGAINST CORRUPTION

LIMPOPO PROVINCE



None identified thus far – investigation is ongoing.



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MPUMALANGA PROVINCE



None identified thus far – investigation is ongoing.



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STRIKING AGAINST CORRUPTION

NORTHERN CAPE PROVINCE

- ❑ A holistical overhaul of how medico-legal claims are processed by the Department of Health needs to be strategically planned and implemented in such a manner that it will benefit the claimant's child suffering from cerebral palsy illness more than the claimant or plaintiff's attorney.
- ❑ The RAF direct claim system wherein claimants involved in motor vehicle accidents are compensated directly by the RAF should be looked at as a similar compensation model that can be used in the department of health's operational model of medico-legal claims.
- ❑ National keypoints in provincial Department of Health's health care facilities such as admissions, casualties and maternity wards where mothers of children suffering from cerebral palsy are admitted should be re-designed or re-modelled in such a fashion as to offer customer care services to advise the patients on the legal risks and issues of signing powers of attorneys, Trusts, etc.
- ❑ The United Nations 17 Developmental Goals, specifically goal number 1 (No poverty), number 2 (Zero hunger) and number 3 (Good health and well-being) to be one of the department of health's strategic drives and visions in their strategic framework in the next 5 to 10 years in as far as medico-legal claims of children suffering from cerebral palsy as a result of the department's negligence is concerned.
- ❑ A continental and international medical summit to be planned which will address how other developed African and international medical countries (i.e Cuba, America, etc) are mitigating the risk of medico-legal claims against their healthcare system to primarily or solely benefit the children suffering from cerebral palsy.

NC PROVINCIAL DEPARTMENT OF HEALTH

- ❑ The Department of Health should plan and allocate budget for national roadshows and strategic marketing strategies should be implemented by the department wherein awareness campaigns are done by the department to South African rural communities and townships educating the general public and potential victims of unethical attorneys who do not educate their clients and abuse the department's claims system.
- ❑ The Master of the High Court should come to the party in as far as having proper checks and balances prior to registrations of Trusts. For instance, whenever an attorney who claims on behalf of a mother of a child suffering from cerebral palsy wants to register a Trust on behalf of the child the Master of the High Court should ascertain and satisfy themselves that the mother is aware of what she signed up for and the legal ramifications thereof. This can be done by making contact with the mother and verifying that they are aware and in fact gave consent to the registration of the said Trust.
- ❑ The Department of Health to implement and monitor an Electronic Case Management system from the time a patient arrives at the hospital- this should be compulsory at all hospitals including government hospitals and clinics. This will alleviate the problem of missing files- making it difficult for the department to defend claims. The system should only have authorized users and a system that will track log in information- so that hospital records and not "sold".





SIU^{SA}
STRIKING AGAINST CORRUPTION

NORTH WEST PROVINCE



- None identified thus far – investigation is ongoing.



SIU^{SA}
STRIKING AGAINST CORRUPTION

WESTERN CAPE PROVINCE



- None identified thus far – investigation is ongoing.

SUMMARY OF OUTCOMES

5



SIU SA
STRIKING AGAINST CORRUPTION



SUMMARY OF OUTCOMES

The investigation has to date yielded significant outcomes, including **the prevention of potential losses for the state** amounting to **R3 104,684,800.00**. Additionally, referrals for administrative action have been made to various bodies including **61 to the LPC totaling R610,789,970.00, 45 to the LPFF totaling R279,500,000.00, and 54 to the NPA totaling R374,289,970.00**. Furthermore, **95 investigations have been concluded** during the reporting period, identifying **54 cases of actual fraudulent medico-legal claims**:

No	Outcome	Value(R)/ Total
1	Rand value of potential loss prevented (inclusive of matters identified by the WCDoH province amounting to R409 million)	R3 104 684 800.00
2	Rand Value of referrals made for administrative action to the LPC	R610,789,970.00
3	Rand Value of referrals made for administrative action to the LPFF	R279,500,000.00
4	Rand Value of referrals made for administrative action to the to the NPA	R374,289,970.00
5	Number of referrals made for administrative action to the LPC	61

SUMMARY OF OUTCOMES(Cont.)

No	Outcome	Value(R)/ Total
6	Number of referrals made for administrative action to the LPFF	45
7	Number of referrals made to the relevant NPA	54
8	Number of investigations closed out under a published proclamation	95
9	Number of actual Fraudulent Medico-Legal Claims Identified	54

The actual loss prevented has a potential to **exceed R4 billion**. This will be achieved once the amounts of **R661 million** and **R657 million**, which have been referred to the GDoH and LDoH respectively, are removed the CLR. The SIU will actively monitor the removal of these amounts from the CLR.

INVOICES

6



SIU SA
STRIKING AGAINST CORRUPTION



SUMMARY OF INVOICES

To date, the SIU has issued invoices amounting to **R57,223,349.50**, of which only **R2,476,433.75** has been received in payment. As a result, there remains an **outstanding balance of R54,746,915.75**:

No	Department of Health	Total Invoices Issued	Total Invoices Paid	Outstanding Balance
1	ECDoH	R14,855,205.00	R0.00	R14,855,205.00
2	FSDoH	R3,538,467.00	R1,061,995.00	R2,476,472.00
3	GDoH	R15,780,680.00	R0.00	R15,780,680.00
4	KZNDoH	R8,145,721.25	R1,414,438.75	R6,731,282.50
5	LDoH	R8,551,066.25	R0.00	R8,551,066.25
6	MDoH	R0.00	R0.00	R0.00
7	NCDoH	R1,835,382.50	R0.00	R1,835,382.50
8	NWDoH	R4,516,827.50	R0.00	R4,516,827.50
9	WCDoH	R0.00	R0.00	R0.00
Total		R57,223,349.50	R2,476,433.75	R54,746,915.75



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Thank you

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