

Doctors battle high insurance costs

High insurance costs are crippling practices in specialist fields, making it difficult for doctors to keep their doors open

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FOR as long as he can remember he wanted to be part of the miracle of new life being brought into the world. "There's nothing more fulfilling than helping someone become a mother for the first time – especially someone who has struggled with pregnancy," he says. And so three years ago Dr Lesego Sefanyetso quit working as a general practitioner to open his own practice as a gynaecologist and obstetrician, celebrating the magic of birth along with each patient as their newborn took their first breath.

But now the 41-year-old doctor's life-long dream might be dashed, thanks to rising insurance costs in his field of speciality that is all but crippling his practice.

When Dr Sefanyetso opened his Joburg surgery in 2014, his comprehensive insurance cost was about R33 000 a month. This year, his premiums shot up to R80 000 a month.

In comparison, a psychiatrist also based in Johannesburg tells us his in-

surance costs R20 000 a year "because psychiatrists hardly get sued and when

we do, the settlements are not as huge". Lawsuits are mostly filed against

specialists in more high-risk fields such as neonatology, neurosurgery, ort-

hopaedics, gynaecology and obstetrics, which in turn affects their insurance premiums – and experts say costs are being compounded by vulture-like lawyers who are cashing in on inflated claims.

What does this mean for South Africans? Fewer specialists to do much-needed work or a massive increase in fees.

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Dr Sefanyetso is one of many doctors who are affected: Parliament recently heard that gynaecologists and obstetricians are being forced to take out huge insurance policies to protect themselves from ever-increasing malpractice claims.

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BY SABELO NDLANGISA

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ABOVE: Dr Lesego Sefanyetso is struggling to keep his practice open and feels something should be done to find a balance between patients' needs and doctors' duties.

targeting specialists in private practice, but those in State-owned hospitals and clinics too. The situation is so worrying the Health Department has set aside a

whopping R41 billion for malpractice suits for this year. AGAUTENG obstetrician/gynaecologist who splits his time be-

tween the public sector and his private practice tells us he has seen tents hanging out near obstetric and orthopaedic wards at the public hospital where he works. He claims they are soliciting business for lawyers, just like they used to search for victims of roads crashes in the past.

"We are basically working for insurers," says the doctor, who spoke on condition of anonymity.

KwaZulu- Natal MEC for Finance Belinda Francis Scott slammed this behaviour as criminal.

"If there is a problem birth, there are lawyers lying in wait before the baby is even born. They tell the family they are submitting a claim for R200 000 then they submit a claim for R2 million and pocket the rest," she recently told Parliament at a special sitting to discuss the high rate of legal claims against health departments nationwide.

The KZN Health Department has the second highest claims total after Gauteng – during 2016 and 2017 the province spent a staggering R243 million on claims, which was not budgeted for.

KZN MEC for Health Dr Sibongiseni Dhlomo says some law firms are advertising their services to encourage people to hire them if they felt they received poor medical treatment from the State, The Times newspaper reports. He says

lawyers are colluding with doctors in some instances to get patient files in order to lodge claims.

This phenomenon is mirroring worldwide trends, Deon Francis, a partner at the law firm Hogan Lovells (SA) Inc. in Johannesburg, says.

"Our society in general has become increasingly more litigious," he adds.

"We are becoming a lot like the US and the UK. Look at class action lawsuits, which have been prevalent in those jurisdictions for many years – it is only recently that we have seen the class actions being instituted in South Africa. And we are following their trend, especially with regards to awarding larger damages awards."

There are a number of other contributory factors which have also resulted in the situation worsening. Many have attributed the increase in medical malpractice litigation to the amendments to the Road Accident Fund Act in 2008. These amendments resulted in a cap being placed on loss of income awards and general damages awards being limited to serious injuries only.

Technology is also contributing to high damages claims, say attorneys Justin Malherbe and Natasha Naidoo from the law firm Norton Rose Fulbright SA Inc.

"It is not unusual for patients who are injured in a motor vehicle accident



RIGHT: Attorney Natasha Naidoo reckons some kind of ombudsman should mediate disputes, which might help doctors and patients.

or who have lost a limb to request a robotic prosthetic arm or leg, which can cost millions of rands," Malherbe says. "That was not previously available to claimants, but it is now and it's starting to filter its way into the lawsuits that we see."

NOT all malpractice lawsuits are inflated or unwarranted, though. For example, the Health Professions Council of South Africa slapped Emalahlani gynaecologist Dr Danie van der Walt with a R10 000 fine after a 23-year-old

mother bled to death after delivering her baby under his watch in 2005.

The Witbank Magistrate's Court convicted Van der Walt of the culpable homicide of Pamela Daweti late last year and he is due to be sentenced in July, paving the way for Pamela's family to sue him and the hospital where she died.

It's clear Government needs to crack down on illegitimate and inflated legal claims, but they also have to strike a balance between those lawsuits that are warranted, experts say.

Minister Motsoaledi is trying to get to grips with the problem and has set up a team to probe the increasing number of court cases. Some members of the ANC's NEC Subcommittee on Education and Health are said to be mulling over the idea of putting a cap on payouts while the South African Law Reform Commission, the statutory body that makes recommendations about the changes to our laws, started work on a discussion paper on medical malpractice.

Researcher Ronel van Zyl says it will be several months before a draft is released for public discussion.

They are concerned about the increase in the cost of clinical negligence over the past six years, says Dr Graham Howarth, Head of Medical Services: Africa at the Medical Protection Society (MPS) which covers the insurance needs

of 300 000 health practitioners worldwide.

This, he adds, has forced the MPS to hike members' subscriptions so it could defend their interests in the future.

He explains that it can take up to 20 years for birth-related legal claims to be made, compared to five years for non-obstetric complaints. Birth-related claims "are often the very largest of claims", he adds. "The MPS is well aware of the challenges posed by such increases, and that these are challenging times for our members. We are keen to join forces with other role players to be part of the solution."

Until then, doctors will have to manage their insurance costs as best they can to ensure they keep their doors open.

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