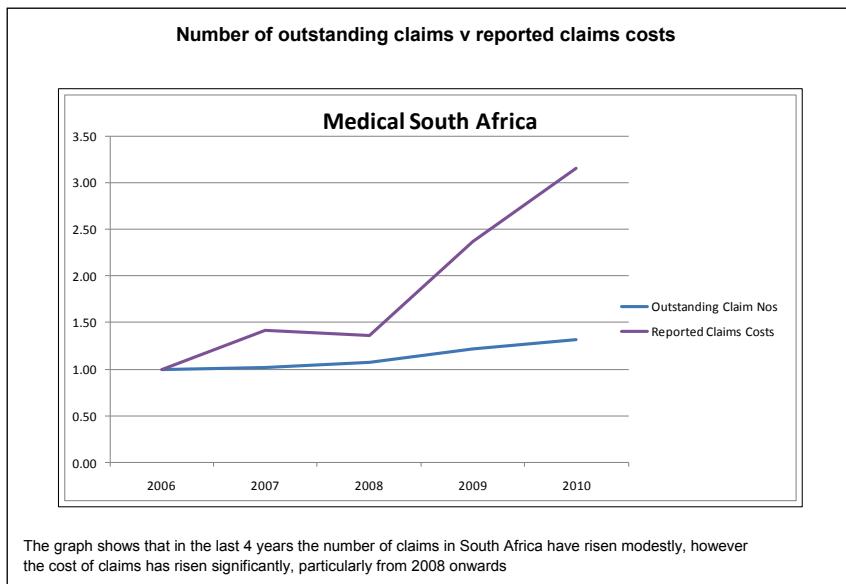


Medical negligence pay-outs soar by 132% – subs follow



A combination of patient-claims litigators becoming smarter, fast evolving (and expensive) medical technology and growing patient awareness has sent the cost of reported negligence claims soaring by 132% in South Africa over the past two years.

This is according to the Medical Protection Society (MPS) the largest indemnity backer of health care professionals in the country (26 000 members). It says this is part of a world-wide trend, although patient awareness may be growing faster locally than in more mature democracies. Local MPS members have also experienced a 30% rise in the actual average number of claims over the past four years. There are currently 1 000 cases open for South African MPS medical members.

The net result is that MPS subscriptions shot up from 1 April this year, with the riskier disciplines such as obstetrics, spinal surgery and paediatrics (more specifically paediatricians undertaking any neonatal care) taking the hardest hits. This last group faces the largest increase (185%) because of the MPS's experience of 'catastrophic injury arising in this field', and has been bumped up into a higher risk subscription band, to now pay R26 230 annually. Paediatricians already in the neonatology category face lesser increases and those not doing any neonatology will pay 28% more at R11 750 per annum. Obstetricians and spinal surgeons will pay an extra 43.9% and 65.2% respectively, pushing their already hefty annual premiums to R187 830 and R174 700, respectively.

Gynaecology, trauma surgery and orthopaedic surgery, plastic and reconstructive surgery, bariatric surgery and fertility medicine come in at R101 830, a 48% hike. Least affected will be medical interns (R100, no increase) and non-procedural GPs (R7 750, a 10.1% increase).

The bigger hikes reflect the increase in the cost of compensation awards made to young children harmed by negligent treatment and specifically the substantial cost of funding lifetime care packages. According to Dr Graham Howarth, MPS Head of Medical Services for Africa, obstetricians, spinal surgeons and paediatricians doing neonatal work statistically have the greatest chance of facing the most expensive negligence claims. The 132% spike in reported clinical negligence claims was across all claims, with the five highest between 2006 and last year representing more than twice the cost of settling the five highest over the preceding five years.

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One neuro patient pay-out – R17 million

The costliest MPS settlement on behalf of a South African doctor yet was R17 million

last year (a spinal/neurosurgery case), involving a patient who suffered catastrophic neurological damage.

Said Howarth: 'The most worrying thing is that the value of claims has increased exponentially over the last couple of years. I'm pretty certain it's not about doctors getting sloppy, but much more to do with patient awareness and even commercial lawyers advertising'. The price of patient care packages was also increasing as technology accelerated, enabling patients who suffered adverse events to live longer and have higher quality lives than before. Patient litigators were also becoming more astute as to what they could legitimately claim for. Howarth added: 'For (successful) paediatric and obstetric claimants, you're looking at a lifetime of care nowadays whereas 10 - 15 years ago they wouldn't have survived. When it comes to (budgeting for) technology we predict forward 30 - 40 years, plus factor in inflation over and above that,' he explained. He cited a simple example of children who could no longer walk having to change their wheelchair as they grew older, plus caregiving and architectural design and building costs as disabled patients were forced to alter their living environments to cope.

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South African patients 'waking up' to their rights

Pressed on whether there were any peculiarly South African characteristics in the figures he was sharing, Howarth said that the MPS had anticipated that patient awareness in a developing country like South Africa would increase exponentially as citizens became more aware of their rights under one of the world's most enlightened constitutions. Asked what the MPS reserves were currently and historically (the MPS has 270 000 members globally), Howarth would only say the group has R18 billion in assets with more than one billion of this held in investments in South Africa to meet the



Dr Graham Howarth, Medical Protection Society (MPS) Head of Medical Services for Africa.

costs of future claims. 'But you'll find that the graph (claims costs versus subs) basically follows what our litigation is. There are no profits because we're a mutual that belongs to its members and we have no shareholders,' he stressed. He said the benefit of belonging to an international mutual was that there was also a central reserve to provide financial protection should there be a sudden and

unexpected adverse claims experience in South Africa. The negligence claims increase was a 'general phenomenon' affecting all indemnifiers and insurers in the industry. 'Doubtless members will be cross with us and compare us with others who might be marginally cheaper but our competitors will be confronted with the same context, this is not unique to us, even though we're the largest,' he said.

Howarth said his society was hoping to host a local conference on patient safety later this year, involving both government and non-government stakeholders to see what could be done to mitigate risk factors and reduce litigation costs.

Unlike most of its competitors, the MPS covers members for their lifetime and beyond, as long as the incident occurred while they were paid-up members. Howarth said his society was hoping to host a local conference on patient safety later this year, involving both government and non-government stakeholders to see what could be done to mitigate risk factors and reduce litigation costs. The conference would be particularly well-timed given the looming National Health Insurance (NHI), and large-

scale accreditation of hospitals, both public and private, in order to qualify for state funding. Patient safety and quality assurance form a large part of this process.

'You just have to track our newspapers to see what litigation is costing our government (the MPS only covers state doctors who receive payment for work done outside of the public service – RWOPS). We don't want to be alarmist, but realist and find solutions,' he added. Howarth scotched an *Izindaba* suggestion that the MPS was being less than fully transparent in sharing its wider dataset. 'You can go onto our website and see all the subscription rates and the increases – our financials are also open for scrutiny – you won't find that kind of transparency among our competitors,' he claimed.

Every year, the MPS runs a series of workshops for doctors on how to minimise exposure to risk. Asked to distil them into a paragraph of pragmatic advice, Howarth said that setting patient expectations correctly when taking consent was crucial. 'If you create unrealistic expectations prior to a procedure, you're much more likely afterwards to be sued if they're not met. And if a patient comes to you and a problem has occurred – absolute openness. There must be open disclosure. There's absolutely no merit in trying to deny or hide,' he added.

Chris Bateman