

## COIDA: TO TREAT OR NOT TO TREAT.....

In response to numerous queries from general practitioners from all walks of life we commissioned a firm of attorneys to look into the position of General Practitioners regarding treating or not treating Workman's Compensation Injuries.

The following is a compilation of the law and your position with respect to the Compensations Commissioner.

Section 74(1) of COIDA states: -

“A medical practitioner **shall** within 14 days after having for the first time examined an employee injured in an accident, or within 14 days after having diagnosed an occupational disease in an employee, furnish a medical report to the employer concerned in the prescribed manner.....”

Section 74(3) of COIDA states: -

If a medical practitioner fails to furnish a medical report, or in the opinion of the Commissioner or the employer individually liable in mutual association, as the case may be, fails to complete it in a satisfactory manner, **such party may defer the payment of the cost of the medical aid concerned until the report has been furnished or completed in a satisfactory manner, and no action for the recovery of the said cost shall be instituted before the report has been so furnished or completed.**

Section 74(4) of COIDA states: -

No remuneration shall be payable to a medical practitioner for the completing and furnishing such forms.

Legally when the word shall is used, it means “non-negotiable.” This therefore means that doctor is legally **obliged** to issue a first medical report within 14 days having seen an injured employee. The South African Department of Labour on its website entitled “Basic Guide to submitting a medical report” ([www.labour.gov.za](http://www.labour.gov.za)) states:

*“A doctor who fails to submit a medical report will be liable of medical expenses until the report has been submitted.”*

This latter quote is particularly worrying as it appears that should a doctor fail to submit a medical report, he is liable for the cost of all medical expenses until such a report has been submitted.

Many doctors have requested whether or not they can make a private arrangement with the employee's employer to secure private payment for an injured worker. The Compensation Commissioners website ([www.wcomp.gov.za](http://www.wcomp.gov.za)) in the section marked “**Medical expenses**” it is stated that:

“All reasonable medical expenses incurred by or on behalf of an employee in respect of medical treatment necessitated are defrayed by the Compensation Commissioner or

the carrier of the risk, provided the accident/occupational disease was reported by the employer in the prescribed manner.”

**Under no circumstances** should employers pay the account themselves.

It is thus clear that a practitioner cannot withhold the WCL4 report nor can he enter into a private arrangement with the employer to pay for the consultation.

Section 74 of the COID Act and the Guidelines set out by the Department of Labour thus require a medical practitioner to: -

- Complete a WCL Form after examining an employee if the injury/disease was sustained/acquired under the scope of COID. The relevant WCL and subsequent forms may not be withheld as a means to force payment for services rendered as doctors are compelled to complete such a report in terms of the law, after having seen and treated an injured worker.

Section 76(3) of COID also provides that if the Director General (or the employer individually liable or a mutual association) is liable for the payment of the cost of a medical aid. then

(A) N/a .....

(B) **No** amount in respect of the set cost shall be recoverable from the employee or an employer other than an employer individually liable.

In amplification paragraph 78 (1) states that if an employer makes arrangements to provide to his employees injured in accidents with, medical aid (in other words financial assistance) which in the opinion of the Director General is not less favorable to the employees, the Director General may, subject to such conditions as he may determine, provide such arrangements.

It is very important to understand that this paragraph permits employers **provided that they are so approved in advance by the Director General,** to come to an arrangement to defray medical expenses. This however cannot be done on an ad hoc basis **but has to be formally done through the offices of the Director General** and in a legal undertaking.

Section 78(2) furthermore states that employees concerned shall be entitled to medical aid (in other words fundamental) in accordance with the arrangements (aforementioned then)

The employer concerned shall not be required to provide or pay for medical aid (in other words medical funding) except in accordance with the set arrangements

The Director General may reimburse an employer who is not individually liable so much out of the compensation fund or reduce his assessment to such an extent as he may deem equitable.

The above therefore describes a situation where should an employer choose to defray the injured parties expenses and should the Director General so approve, then the employer may assume responsibility for the payment of medical accounts. This is

however by formal arrangement and there is no obligation on the employer to do this on a regular basis nor can the medical practitioner insist that this be done.

In the absence of such an approved arrangement there is **no provision for a medical practitioner to bill an employer instead of billing the Compensation Commissioner**

A practitioner who invoices an employer to complete a WCL4 Form and treat his worker is thus acting contrary to the guidelines published by the Compensation Commissioner. The HPCSA may well take a view that the practitioner is not entitled to submit an account to an employer.

It should furthermore be remembered that treatment on COIDA is wallet free to an employee provided that a claim is valid.

Herein lies a problem in that the Commissioner frequently does not make the assessment of what is and what is not valid in a timeous manner. Whilst waiting for the Commissioner's decision it appears that a practitioner cannot bill an employer or an employee for services rendered under COIDA.

If however the case is rejected, then, provided that you have agreed in advance with the employee that should the case be rejected by COIDA that he would be personally liable, you are entitled to render a bill directly to him for your services.

### **MUST A DOCTOR TREAT AN INJURED WORKER?**

There are no general obligations on a Doctor to treat a patient except if that person is in a need of emergency treatment.

The HPCSA in ruling 31.58 of 2005 dealt with Workman's Compensation cases.

- Trade Union adopted a resolution submitting to the council their strongest protest against the action of certain doctors who refused to handle WCA. Certain doctors apparently refused to render emergency attention to such cases due to the inconvenience of having to wait for payment from the COIDA Commissioner because the amounts that the doctor received was less than what would be charged if the patient had been seen in private.
- Councilor advised that the Trade Union of a previous resolution of the treatment by practitioners, namely he/she is free to decide to whom he/she wanted to render a service. The practitioner may however, be called upon to justify his action in the event of unnecessary suffering or death resulting from his/her refusal to render health to a patient. A practitioner was obliged to render assistance under all circumstances in emergencies.

### **WHAT IS AN EMERGENCY?**

Unfortunately an "emergency" has never been properly defined. It would however probably be reasonable to regard an emergency as a situation in which failure to

render medical assistance would result in death, sequelae which could have been avoided had assistance been rendered properly, and/or unnecessary suffering.

## **PROMOTION OF EQUALITY AND PREVENTION OF DISCRIMINATION ACT:**

Finally the Promotion of Equality and Prevention Act<sup>4</sup> of 2000, Section 6 provides that “ no person may unfairly discriminate against any other person”

### **WHAT IS DISCRIMINATION?**

Discrimination is defined as an act or a mission, including a policy rule, law, practice condition or situation which directly or indirectly

- Imposes burdens, obligations or disadvantages or
- With holds benefits, opportunities or advantages from a person on one or more of the prohibited grounds.

“Prohibited Grounds” are defined as:

(A) Race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, language and birth or

(B) Any ground on which discrimination on that other ground

(1) Causes or perpetuates systemic disadvantage

(2) Undermines human dignity

(3) Adversely effects the equal enjoyment of a persons rights and freedom in a serious manner

### **THE EQUALITY ACT:**

The equality act sets out an illustration of unfair practices in healthcare services and benefits in paragraph 3 these are

(A) N/a

(B) Unfairly denying or refusing a person access to healthcare facilities or failing to make healthcare facilities accessible to any person

(C) Refusing to provide emergency medical treatments to persons of particular groups identified by one or more of the prohibited grounds

Thus a blanket refusal by a practitioner to treat a COIDA case might fall foul of the Equality Act unless emergency treatment was administered.

### **TREATS FOR COMPULSION**

The COIDA section 37 deals with threats and compulsion. Any person who threatens an employee or in any manner compels or influences an employee to do something resulting in or directed at the deprivation of that employee’s rights to benefits shall be guilty of an offence.

## **PAYMENT TO DOCTORS**

Unfortunately the current COIDA ACT does not provide any time frame for the consideration of a claim or payment of medical accounts, nor is there any provision for a practitioner to enforce such payment.

## **REMEDIES**

What remedies are available to doctors who are not paid by the Compensation Commissioner: -

- (1) The doctor might decide to sue the Minister of Labour or his representative. The doctor would have to demonstrate that the amounts claimed were **valid and accepted** claims and that the claim had been correctly submitted, considered and accepted.
- (2) Extra judicial remedies
  - a. To convince SAMA to lobby with the Department of Labour
  - b. To approach the Public Protector and request his intervention

The Public Protector is competent, but not obliged to investigate such a complaint.

An organization such as the South African Managed Care Coalition could mobilize a large body of doctors to provide them with sufficient information to approach the Public Protector in this regard.