



## LAWMAKERS 'PROTECTED PHARMACIES'

Dispensing doctors breathed a sigh of relief on 11 March when the government's dogged legal insistence that they not dispense medicine within 5 km of any pharmacy was over-ruled on appeal to the Constitutional Court.

The victory is all the more significant in that doctors setting up practices in future will also not be affected by the provision which the court declared null and void.

Legal costs totalling an estimated R500 000 which the Pretoria High Court had ordered the applicants, the National Convention on Dispensing (NCD) and the Affordable Medicines Trust to pay the Department of Health were also set aside.

Each party to the finalised court tussle must now pay its own legal costs.

The provisions of the regulations that dictated what the Director General of Health must consider before granting a doctor a licence to dispense drugs 'manifestly protected' pharmacies against competition, the Constitutional Court found.

### Ruling will encourage applications

Dr Norman Mabasa, NCD chairperson, told *Izindaba* that before the 11 March ruling, doctors in city centres, urban and peri-urban areas were 'simply not bothering' to apply for the drug dispensing licence. This was because very few of their practices fell outside a 5-km radius of a pharmacy.

'This is a huge victory for us – we had been negotiating with the Health Department for a grandfather clause to at least protect doctors from new pharmacies having set up when we re-apply for the dispensing licence every 3 years,' he added.

Qualifying doctors would in future no longer be saddled with what would have been a potentially debilitating burden. The NCD objection to the provision requiring doctors to re-apply for dispensing licenses every 3 years had been dealt with. This was that the Health Department would use it to

drive home the now defunct 5-km pharmacy rule.

The NCD also had no objection to stating the physical address from which doctors would be dispensing because it supported regular government inspections to facilitate doctor compliance with good dispensing practices.

Mabasa said legal clarity was still being obtained on one ruling that the Health Department had claimed victory on. The Constitutional Court ruled that Tshabalala-Msimang had acted within her powers under the Medicines and Related Substances Act in making regulations requiring a dispensing licence to be issued in respect of particular premises.

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Mr Justice Ngcobo said the regulations facilitated regular inspection of dispensing premises for compliance with good dispensing practice. If the public was to have access to safe medicines, the activity of dispensing medicines could 'not be reasonably delinked' from the premises from which such dispensing took place, he added.

The judge also effectively said that doctors who did locums could still secure dispensing licences but had to dispense medicines from premises that were licensed to do so. At the time of going to press Mabasa said NCD lawyers were 'clarifying' the precise meaning of the wording on this locum/premises ruling

Their interpretation was

that any dispensing-licensed doctor could dispense from any dispensing-licensed premises.

The NCD reasoning is that it would be incongruent to allow licensed doctors serving locums a privilege not afforded to other licensed colleagues.

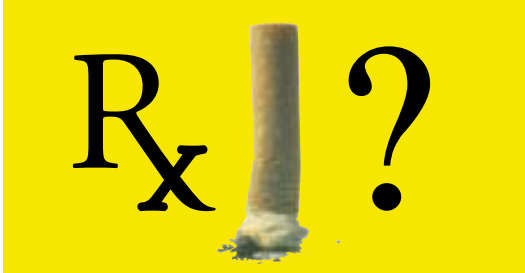
### SAMA hails victory

SAMA chairman, Dr Kgosi Letlape, welcomed the ruling, calling it 'a victory for patients to receive effective and affordable care. SAMA is very pleased that this right has been upheld'.

'Of course, we are very thankful that we live in a constitutional democracy. This ruling will ensure that the good practice of medicine will continue,' he added.

The judgment came just days before the Constitutional Court sat down to hear the high-profile appeal case by the Department of Health on the drug pricing regulations.

Chris Bateman



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