BEHAVE + PAY COSTS, HPCSA TELLS GUILTY DRS.

The four Linksfield Clinic doctors found guilty of receiving kickbacks for referring patients to radiologists Illes and Partners must avoid any similar offence for five years or face suspension from the register for five years.

They must also pay the R1.23 million which they accepted in kickbacks to the Health Professions Council of South Africa (HPCSA) to help it recoup the legal costs it incurred in the probe and holding the hearings.

The laborious and intricate hearing which lasted two years, also sentenced Drs Julius Preddy, Leonard Nainkin (orthopaedic surgeons) and Ian Weinberg (neurosurgeon), to work in a public hospital once a week for the next two years.

Dr Percy Miller’s (neurosurgeon) punishment was harsher at twice a week for two years.

The now Australian-based neurologist Dr Stanley Levy was granted indemnity after admitting that he lied to cover up receiving R882 690 in kickbacks and perverse incentives over five years.

His colleagues, found guilty of professional and disgraceful misconduct, protested their innocence to the end.

Levy belatedly gained indemnity from prosecution for ‘coming clean’ after the HPCSA retracted an identical offer made to all the referring specialists.

The Medical and Dental Professions Board (MDPB) professional conduct committee concluded that the remaining doctors could not rely on indemnity as they had misled the HPCSA in asking for it and were ‘not frank and truthful’ in their disclosures.

Once the investigation began there were ‘efforts to deceive’ the HPCSA and evidence of collusion between the practice of Illes and partners and the referring doctors.

Levy told the professional conduct hearing that Illes partner Geoffrey Swartzberg approached him and urged him to deny receiving any kickbacks. Swartzberg had instructed him to say that he (Levy) and his four referring colleagues were partners in a company which had purchased an MRI machine and that the payments were ‘dividends’ in return for signing surety for the purchase of the MRI machine.

Levy subsequently entered solo negotiations with the HPCSA and was conditionally re-granted indemnity much to the consternation and anger of his co-respondents.

Levy told the MDPB hearing that he had organised for Illes and Partners to pay Levy’s rental payment by Illes and Partners stopped in 1999 when Netcare acquired control of the Linksfield Clinic and decided that certain medical specialists, including neurologists, would no longer be required to pay rent.

Swartzberg then told him about a ‘joint venture’ Illes and Partners had with some of the other doctors at Linksfield and offered him a ‘percentage’ of fees charged by the radiologists for work performed on patients referred.

Knowing that no such venture had been ‘formally or lawfully’ established, nor approved by the HPCSA, Levy said he then began receiving payments from Illes and Partners on a monthly basis.

Later he learned that the payments were based on 4.5% of charges levied by the radiology firm (excluding VAT and bad debts) for all patients he referred to.

When, in 1995, he acquired a partner and his workload increased, Swartzberg had organised for Illes and Partners to contribute towards the salary of a secretary.

After several payments for referrals he had asked Swartzberg whether they were legal.

Swartzberg said the matter was ‘being legitimised’ by making the referring doctors shareholders in a joint venture.
so the payments could be reflected as ‘dividends’.

Illes and Partners later produced a
document for him to sign detailing the
formation of such a joint venture
company.

However he was never subsequently
advised of any shareholders’ meetings
nor did he discover whether the
company actually existed.

Levy further confessed that his initial
statement to the HPCSA investigators
was false and that, given his ‘failure to
make full disclosure’, their decision to
withdraw earlier indemnity given to
him (and the other doctors) was ‘wholly
correct’.

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He strongly refuted suggestions by
Illes and Partners that he and the other
referring doctors had threatened to refer
patients elsewhere unless they were
paid for this and reiterated that the
approach had come from Swartzberg.
On paper, Levy was the biggest
beneficiary of the kickbacks.

Dr Richard Tuft, President of the
Radiological Society of South Africa,
expressed ‘delight’ at the verdict, calling
it a ‘landmark ruling’.

Tuff said it reflected the determination
of the Council to crack down on corrupt
doctors who affected the image of the
profession ‘by accepting or giving
bribes’.

‘Our patients must have absolute
confidence and trust in us and know
that the treatment they receive is
appropriate and not influenced by
doctors’ financial considerations.’

Giving evidence in mitigation, a
fellow Linksfield specialist surgeon,
Dr Martin Lebos, said that striking them
from the register would rob the country
of some of its best doctors.

He added pointedly, ‘If you take these
guys out you will need to remove 75% of
the profession’.

Asked by committee member Dr PR
Makhambeni whether he was
suggesting that because most of the
doctors in the country were receiving
kickbacks, the committee should be
lenient with the respondents, Lebos
replied, ‘no’. He described the
respondents as ‘the cream of the cream,’
and with the exception of Nainkin, all ‘at
the height of their careers and earning
powers’.

Weinberg, although the co-developer
of the country’s first prosthetic lumbar
and cervical disc implant, was ‘gullible’
and had ‘zero business acumen’. ‘He has
good ideas but not the faintest idea of
how to put them into practice – he wouldn’t have known what he was
getting into,’ said Lebos.

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**Miller accused the HPCSA of selectively discriminating against him and his fellow respondents when it knew other doctors were doing the same thing.**

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Sister Barbara van Dyk, a matron at
Linksfield Park Hospital who scrubbed
with Miller and Preddy and is currently
studying for her Masters Degree in
Ethical Practice, described Miller as a
man who ‘repairs the dignity of the head
and the soul’.

Miller worked ‘all hours’, while
Preddy was ‘meticulous and fanatical
about detail’.

Miller was virtually without peer in
pain management in South Africa,
uniquely using radiofrequency
treatment for trigeminal neuralgia and
sympathetic dystrophy and nerve route
gangliotomies, the committee heard.

In an emotional outburst for which he
later apologised, Miller said his patients
did not deserve to have ‘this junk’
pushed into their faces because of ‘the
despicable nature of what has
happened’. He confirmed to Mike
Maritz for the HPCSA that he found the
committee verdict ‘junk’ because he did
not consider himself to have knowingly
done anything wrong. He therefore felt
no remorse.

Miller said that if he were struck off
the register his life would turn into a
‘wasteland’ and accused the HPCSA of
selectively discriminating against him
and his fellow respondents when it
knew other doctors were doing the same
thing.

He accused Dr Richard Tuft, president
of the Radiological Society of SA, which
spearheaded the investigation four years
ago, and former colleagues Levy and
Nel, who both testified against him, of
having ‘selective morality’.

He told committee chairman,
Professor PJT de Villiers, that while he
rejected the findings of the committee he
agreed that the system he was involved in
was ‘open to abuse and wrong’. His
awareness of the problem had been
‘evolutionary’.

Professor Christopher Joseph, Vice
President of the SAOncology Society
and member of SAMAX’s Specialist
Private Practice Committee, testified that
while it might be possible to employ the
respondents in the public service, they
would probably have to take junior posts. However, their skills were vitally
needed in private practice.

Joseph said the entire profession was
‘living in a perverse system – the only
one in the world where funders pay
providers directly’. About 30 medical
schemes had ‘managed to get away from
this – the only way you should make
money is through professional fees,’ he
opined. SAMANeeded a better
programme of ethical education, he
added.

Another colleague, Dr Dimitri
Devolous, said the respondents had
been sufficiently punished by the media
and the public and their practices
damaged irreparably.

While the committee had a duty to
‘send out a message’ to the profession
and the public, the guilty doctors
remained a major asset to the profession
and the community.

Chris Bateman