



## BACK TO THE FUTURE FOR DISPENSING

The simmering discontent around the new drug dispensing legislation erupted into street protests and legal battles last month as national bodies representing pharmacists, consumers and dispensing doctors faced down the Health Minister.

Two separate legal actions against government saw dispensing doctors draw first blood by winning a second deadline postponement for securing dispensing licences in as many months (deadline was set back to 2 July). The litigants are the National Convention on Dispensing (doctors) (NCD), the Pharmaceutical Society of South Africa (PSSA) and the retail group New Clicks (the latter two combined their legal challenge for practical reasons).

Rumours were rife at the time of the SAMJ going to press that the pharmacists had negotiated themselves a significant dispensing fee increase by bringing the court action but the protagonists remained tight-lipped.

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The acting judge in the doctors' case, Justice Johan Kruger, said he was acutely aware of the gravity of suspending the regulations affecting NCD members. However it would 'not be in the interests of justice' to allow the regulations (originally set back from 2 May to 2 June) to come into effect before deciding on their constitutionality. He will rule on their constitutionality on 2 July.

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training course in dispensing so they could apply for licences.

The New Clicks/PSSA court challenge was postponed to 17 June after repeated discussion in judges' chambers resulted in agreement that wholesalers, distributors and retailers would not be obliged to sell medicines or charge dispensing fees in accordance with the regulations until the case was finalised.

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The significance of this outcome is that the PSSA and Clicks used the courts to force the Health Department to the negotiating table, finally securing a commitment to revisit the dispensing fees. The regulations for these groups only come into effect on 2 August.

The South African National Consumer Union (SANCU) predicted 'chaos and discontent' if the regulations were implemented unchanged and said consumers could end up paying 40% more — the opposite of what government intended.

Ivan Kotze, executive director of both the PSSA and New Clicks pharmacies, confidently asserted that if implemented unchanged, the laws would result in three-quarters of South Africa's pharmacies closing down.

The regulations set 'unsustainably low markups' that would irreparably harm retail pharmacies. 'We say there is a dispensing fee that can maintain the viability of pharmacies and result in the lowering of prices, but they've stuck to their 26%,' he added.

The PSSA is proposing a combination of a rand dispensing fee and a percentage with a break starting at products of up to R10 and continuing upward.

Said Ina Wilken, vice chairperson of SANCU, 'instead of accusing pharmacists, doctors and everyone else



Pharmacists came out in force country-wide to protest 'unworkable' dispensing fees.

of being greedy and taking advantage of the situation, government should go back to the drawing board and actively engage health care providers and suppliers. There are too many reports of government not listening and not engaging with industry role players and consumers alike.'

Kotze said that the way in which the single exit price had been established was not in accordance with the Medicines Act.

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New Clicks is in the early stages of establishing Clicks-branded pharmacies nationwide and were pushing to have the regulations either suspended or declared invalid. Kotze said the PSSA/Clicks action was based on the manner in which Tshabalala-Msimang drafted the regulations and centred on dispensing fees.

Clive Stanton, the PSSA's deputy president, warned that 'this is not even a marginal thing. If these regulations stay, pharmacies will start closing from August.'

The regulations prohibited any

discounting or incentives from 2 May, created a single exit price for manufacturers from 2 June, and bring the distribution chain into line from 2 August.

As the regulations stood at the time of going to press, pharmacists could mark up prescription drugs only by 26% (including VAT) capped at R100 and non-prescription drugs by 16% (including VAT), also capped at R100. Dispensing doctors could add a maximum of only 16% (including VAT) for all scheduled drugs.

Wilken scoffed at the promise of a 40 - 70% saving in the price of medicine made to consumers by Tshabalala-Msimang in January. Instead, consumers were paying more than before and doctors, health care specialists and pharmacists were up in arms, threatening to close up shop and leave the country.

Hundreds of pharmacists around the country closed for business for 3 hours from noon on 1 June to stage a pavement protest with their staff, holding banners aloft bearing slogans such as, 'Doctors doctor, nurses nurse — does that mean that pharmacists farm?' and 'Closed. Say no to Manto and save pharmacies'.

They plan a protest march to parliament, similar to the

unprecedented one by doctors in March this year.

Concerns are mounting about potential job losses and an accelerated flight of skills in the health care industry.

Wilken said there was little relief in sight for the consumer because of the lack of an agreed standard pricing structure and a lack of direction from medical schemes.

He said that SANCU had been watching the situation 'with growing concern' since the beginning of May. 'Reports have reached us of consumers forking out as much as 40% more than before for the same products.'

Promises by Government that the situation would right itself as the regulations come into effect at manufacturer level was 'a pipe dream and simply not good enough'. Winter was drawing closer, people were getting sick and could not afford to buy the medication they needed because pharmacists were not able to pass discounts on.

Vicky Ehrich, of the Pharmaceutical Manufacturers Association (PMA), however flatly disputed Wilken's assertion about not passing on savings. 'This comment is unfortunate because many pharmacists have embraced the spirit of the new legislation and passed on the new prices as soon as possible,' she said.

However many pharmacies are continuing to charge old prices for existing stocks to make up for expected losses when the regulations kick in.

Those saddled with big stocks claim they will have to sell these expensively purchased drugs 'cheaply' when the regulations come in.

One seasoned industry veteran commented, 'as during the apartheid years, we again turn to our courts to bring government in line with stakeholder reality'.

**Chris Bateman**