



**SUBMISSION TO: PORTFOLIO COMMITTEE ON
COMMUNICATIONS**

**TITLE: STATUS REPORT ON SABC MEDICAL AID FRAUD
CASE**

1. PURPOSE

The purpose of the submission is to provide the Portfolio Committee on Communications with the necessary information, facts and circumstances regarding the dismissal of SABC employees who were disciplined for having committed Medical Aid Scheme fraud.

2. INTRODUCTION AND BACKGROUND

The SABC's Forensics Department received allegations that a certain Clinical Psychologist claimed funds from the SABC's Medical Aid Scheme ("SABC Medscheme") for appointments which never occurred. The Clinical Psychologist allegedly colluded with SABC employees to bill the Medical Aid for amounts of approximately **R7, 000.00** per member / employee and in return the beneficiary would receive an amount of **R2, 500.00** in cash.

Further allegations were received that various other healthcare providers submitted fraudulent claims to SABC Medscheme. They allegedly colluded with SABC employees to bill their Medical Aid and in return, the employees were paid an amount in cash.

On **10 March 2014**, Afro Centric Health provided the SABC Forensics Department with the names of SABC employees who consulted with the Clinical Psychologist, for the period **04 May 2013 to 20 February 2014**. The Forensics Department initiated an investigation into allegations made against the Clinical Psychologist who had billed Medscheme for a total amount of **R329, 416.53** for consultations he allegedly held with SABC employees. The allegations that the Clinical Psychologist colluded with SABC employees to fraudulently bill the Medical Aid for "fictitious" consultations were found to be substantiated. Afro Centric Health further provided the SABC Forensics Department with a list of other healthcare providers who allegedly colluded with SABC employees to submit fraudulent claims to the Medical Aid in return for cash payments (i.e. Dr. N, Dr. C, Dr. NI, BC Pharmacy and DV Pharmacy).

During the course of the investigation it was established that there were various methods used by service providers and SABC employees to defraud the Medical Aid:

- At a point in time, an SABC Retailer Administrator: Audience Services was introduced by a third party to a "Lady" at Wits University. The Retailer Administrator provided the Lady with his Medical Aid details (membership number, etc). The Lady submitted a fictitious claim for Retailer Administrator to Medscheme on behalf of Dr. N. Medscheme paid Dr. N on the ground of the claim submitted. The Lady then paid a portion of the proceeds to the Retailer Administrator.
- The Retailer Administrator later introduced a Junior Record Librarian: Media Libraries to the Lady. For all intents and purposes the Lady was the key liaison in respect of lodging claims, tracking progress and facilitating payments between Dr. N, Medscheme

and claimants. In some instances the Lady handed claimants cash in an envelope whilst in other instances she deposited the money into their bank accounts.

- The Junior Record Librarian: Media Libraries obtained and submitted other staff members' Medical Aid details to the Lady. The Lady submitted fictitious claims for staff members to Medscheme on behalf of Dr. N. Medscheme notified individual staff members *via* email about the status of the claim. Upon receipt, they forwarded the claim status to the Junior Record Librarian: Media Libraries. The Junior Record Librarian: Media Libraries forwarded these claim status to the Lady. Upon receipt of the claim status, the Junior Record Librarian: Media Libraries collected money from the Lady on behalf of staff members. The Junior Record Librarian: Media Libraries handed over a cash portion to SABC staff members.
- At a later stage, the Junior Record Librarian: Media Libraries introduced the fraud scheme to the Librarian. The Librarian then commenced recruiting members into his own network and submitted claims in exactly the same manner as The Junior Record Librarian: Media Libraries.
- The Storeman: Henley TV Facilities introduced staff members to another service provider, Dr NI. Staff members provided the doctor with their Medical Aid details. Dr NI submitted fictitious claims to Medscheme and alleged that he consulted with, and dispensed medication to SABC medical aid members. Medscheme paid the doctor in the grounds of the claims received. He then paid a portion of the payment received to staff members.
- Dr. C issued fictitious prescriptions to staff members. The doctor referred staff members to DV Pharmacy and BC Pharmacy. These Pharmacies submitted fictitious claims and paid a portion of the proceeds to staff members. The Doctor submitted fictitious claims for consultations with staff members. Medscheme paid the funds to staff members and not to Dr. C.
- The BC Pharmacy submitted fictitious claims for medication to Medscheme with the permission of staff members. The Pharmacy paid a portion of the proceeds to staff members. The Pharmacy never dispensed medication to staff members. In other instances, the Pharmacy gave staff members groceries and/or toiletries.
- The DV Pharmacy submitted fictitious claims for medication to Medscheme with the permission of staff members. The Pharmacy paid a portion of the proceeds to staff members. The Pharmacy never dispensed medication to staff members.

At the conclusion of the investigation the Forensics audit department generated two Forensic audit reports implicating more than 100 staff members in the fraudulent scheme.

The following sequence of events followed after the audit reports were released:

- On or about **27 March 2015**, two of the SABC's Unions, BEMAWU and CWU, were invited to a meeting wherein they were informed that the Forensics investigations into the Medical Aid fraud allegations had been concluded.
- On or about **01 April 2015** the SABC sought a legal opinion and advice based on the number of employees implicated (more than 100), the limited internal capacity in relation to the initiators and the three persons-disciplinary hearing panels system as per the Disciplinary Code, and on how the SABC should go about implementing the conclusions and/or findings and/or recommendations set out in the Forensics audit reports.
- On or about **28 May 2015** the SABC received a legal opinion.
- On or about **18 June 2015**, BEMAWU and CWU were informed that the SABC's management has accepted the recommendations to institute disciplinary action against the implicated employees. BEMAWU and CWU were further informed of the SABC's intention to dispense with formal disciplinary hearings and were requested to provide inputs by **22 June 2015**.
- On or about **19 June 2015**, BEMAWU urged its members to not make any statements and/or to engage with the SABC on this matter in their absence.
- On or about **23 June 2015**, CWU responded, *inter alia*, by reiterating their request to be furnished with a copy of the Forensics audit report and that the union wanted to take instructions from its members.
- On or about **09 July 2015**, CWU requested a list of all CWU members who were alleged to have defrauded the SABC's Medical Aid.
- During the course of **September 2015**, disciplinary charge sheets together with the supporting documents were delivered to the employees.
- On or about **23 September 2015**, BEMAWU stated that it was refusing to participate in the what it perceived to be an unfair process; demanded the suspension of the alleged unfair process and to engage in further discussions on process to be followed and threatened to approach the Labour Court on an urgent basis.
- On or about **28 September 2015**, the SABC replied that the substantive and procedural issues will properly be dealt with by the chairpersons of the disciplinary hearings when raised with them and advised that the disciplinary hearings were to continue.
- On or about **19 October 2015**, BEMAWU and CWU were informed by the SABC that the deadline for the submission of responses to the charge sheets was extended to **30 October 2015**, and were cautioned that should they fail to submit their representations the SABC reserved the right to continue with the disciplinary process in their absence.

- On or about **29 October 2015**, the SABC informed BEMAWU and CWU that it was granting two shop stewards confidential access to information to verify and to sample the averments contained in the affidavits.
- On or about **30 October 2015**, BEMAWU submitted a notice objecting to the disciplinary process and/or the application for postponement pending the outcome of a labour court case to interdict this disciplinary hearing or any deviation from the SABC's disciplinary procedures.
- On or about **09 November 2015**, a conciliation at the CCMA regarding the challenge lodged by MWASA against the process that the SABC elected to follow was heard by the CCMA. This resulted in a settlement agreement that SABC and MWASA must meet to agree on the way forward before a certificate of non-resolution was issued to the SABC and MWASA. Eventually MWASA demanded restarting the entire disciplinary process and this could not be acceded to by the SABC.
- During the course of December 2015 the Tokiso Dispute Settlement ("Tokiso") was engaged.
- On or about **06 January 2016**, Tokiso wrote to the parties (i.e. the SABC and the disciplined employees) informing them the disciplinary documents had been assigned to the chairpersons and the matter will be dealt with on the papers submitted by the parties. To ensure the chairperson's independence, the name of the appointed chairperson was not known to either party at that stage. The finding of guilt was to be sent to both parties simultaneously on or about 18 January 2016. If the finding was one that the employee was guilty, the parties were to be asked to file submissions in mitigation and aggravation. The chairpersons were to consider those submissions and make recommendations on sanction.
- On or about **14 January 2016**, BEMAWU approached the Labour Court on an urgent basis to interdict the disciplinary process against 35 of its members and the matter was struck off the roll for lack of urgency with no orders as to costs. In the matter of *BEMAWU & 35 Others v SABC & 10 Others: J2239/2015 [14 January 2016]* Steenkamp J in an ex tempore judgment stated that the process adopted by the SABC would not lead to grave injustice and that the exceptional circumstances necessitated the SABC to adopt a procedure other than the normal procedure envisaged by its Disciplinary Code.
- On or about **29 January 2016** the Tokiso chairpersons had made decisions on whether or not the employees were guilty of the misconduct and same was submitted to Tokiso for distribution to the parties.
- On or about **02 February 2016** Tokiso distributed the findings on guilt to the parties and parties were directed to submit written aggravation and mitigation factors by or on 08 February 2016.
- Eleven (11) employees were found not guilty.

- On or about **08 February 2016** parties agreed between themselves to extend the deadline for submissions in mitigation and aggravation to 19 February 2016. Tokiso informed parties to send their submissions to them.
- On or about **19 February 2016** the SABC submitted aggravating factors to Tokiso. Save for two employees who submitted their mitigation factors to the SABC, the SABC was not served with copies of the employees mitigating factors and was not in a position to know if CWU or BEMAWU or MWASA or the individual employees had submitted their mitigation factors to Tokiso.
- On or about **02 March 2016** Tokiso sent recommendations on sanctions only to the SABC. The Tokiso chairpersons' recommendations are discussed under paragraph 3 below.
- On or about **01 April 2016** the Group Executive Human Resources, the Chief Financial Officer, Chief Operations Officer and Acting Group Chief Executive Officer terminated the employment of all the employees found guilty in the disciplinary process and provided letters setting out the reasons for terminations.
- On or about **07 April 2016** on the request of CWU its members were allowed an opportunity to resign before the close of business on 07 April 2016.
- The dismissed employees filed unfair dismissal disputes at the CCMA.
- On or about **28 July 2016** CCMA issued consolidation ruling.
- Subsequent to the consolidation ruling, the CCMA proceeded to set down the four matters for arbitration hearings which were postponed on numerous occasions.

3. CURRENT STATUS

A number of ex-employees referred their disputes to the CCMA. CWU represents 19 of those employees; MWASA represents 29; the Individual Applicants comprise of 14 and BEMAWU represents 44 of those employees.

At the CCMA on or about **30 January 2017** in the matter ***SABC v BEMAWU obo Modisagae, Levy and 46 others (GAJB9843-16)***, BEMAWU withdrew the unfair dismissal dispute referral with an indication that it will approach the Labour Court. At the time of this submission the SABC has not been received the Labour Court papers.

SABC v CWU obo Bodibe, T. and 27 others (GAJB10128-16), on or about **17 January 2017** CWU applied for the rescission of the procedural fairness the ruling which was opposed by the SABC on or about **24 July 2017**. Ruling from the CCMA Commissioner was in favour of the SABC.

SABC v Nthatheni M. Mathoma and 13 others (GAJB9876-16), the review application is before the Labour Court. Heads of arguments have been submitted by the SABC whilst the

other parties needed to ensure that they file Heads of arguments by the **16 August 2017**. Given the complexity and the number of people involved the Registrar indicated that the matter might be directed to a specific judge for case-management.

SABC v MWASA obo Maphetho, Jonas and 38 Others (GAJB8474-16) the CCMA arbitration of the unfair dismissal dispute which had been set down for **15 and 16 May 2018** has since been postponed *sine die*.

SABC

10 May 2018