

Medical negligence claims rise by 25%

The sorry state of the public health sector is reflected in the sharp rise in medical negligence claims against provincial health departments, increasing by around 25% per year between 2011 and 2016.



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This is according to Kirstie Haslam, partner at DSC Attorneys who says that the Gauteng Department of Health receives a particularly staggering number of negligence claims each year. Since January 2015, it has been forced to pay out more than R1.017bn to settle 185 medical negligence claims.

“Deteriorating conditions in state hospitals, as well as incompetence and gross negligence on the part of staff members, are at the root of these claims – the majority of which were ruled in favour of the plaintiffs,” Haslam explains.

She points out that several shocking cases of gross medical negligence have received media attention over the past few years.

Birth injuries

Haslam says that medical negligence claims involving the fields of obstetrics and gynaecology – particularly those involving brain-damaged babies – make up the largest medical negligence category in South Africa. “Often, birth injuries are serious, with life-long consequences for babies and their families.

“In one of many similar incidents, medical staff at a public hospital in KwaZulu-Natal failed to perform an emergency C-section, despite significant evidence that this was required. This led to oxygen starvation of the baby, who suffered physical and mental impairment.”

The child's parents sued the KZN Department of Health for negligence and, when the case was finalised, received R12.9m in damages.

Maltreatment of mentally ill patients

Haslam says that a particularly shocking case of gross medical negligence came to the public's attention in February this year, when the health ombudsman, Professor Malegapuru Makgoba, released a statement regarding the deaths of 93 mentally ill patients in the province.

“The deaths occurred after the Gauteng Department of Health moved 1,300 patients from the Life Esidimeni healthcare facility to 27 unlicensed and ill-equipped healthcare facilities, in an attempt to cut costs,” she says.

“Following the transfer, 93 patients died from causes such as dehydration, diarrhoea, epilepsy, heart attacks and other conditions unrelated to their mental illnesses.”

Negligence by hospital support staff

Surgical mix-ups – ranging from amputations of the wrong limbs to infections due to items being left in patients' bodies – make for shocking reading according to Haslam.

“However, it's not necessarily the massive mistakes like amputating wrong limbs that are leading to malpractice claims but the less obvious ones that are responsible for a significant percentage of South African medical malpractice cases,” she adds.

She cites examples such as failing to react to obvious indicators that medical intervention is needed; failing to listen to patients and their families; ignoring measures for keeping environments and equipment sterile; and incompetence in basic tasks like inserting drips that can have devastating consequences for patients.

Medical negligence not just in public hospitals

Medical malpractice may be rife in public hospitals, but Haslam warns that it can also occur in private facilities.

She cites a 2012 example where the Medical Protection Society (MPS) reached a settlement of R25m with the father of a child injured during a series of botched operations.

The little girl was born in Ireland with a bleed on the brain. She underwent surgery at the age of five to drain excess cerebrospinal fluid and water from the brain.

When her family relocated to South Africa a few years later, the child began to complain of headaches. A neurosurgeon at private hospital in Mossel Bay advised the parents that their daughter needed a new shunt.

The first operation was unsuccessful, and two more surgeries were performed. The first two operations resulted in brain damage. The child now suffers from cognitive, memory, speech, visual and mobility issues.

Successful medical negligence claims

“Obviously, no amount of money can make up for the pain, suffering and often life-long consequences of medical malpractice,” Haslam says. “However, compensation from responsible parties may ease the associated financial burden and cover the costs of required treatment, rehabilitation and support.”

She stresses that suing a hospital or medical professional for medical negligence can be a complex process and requires suitable medico-legal expertise with experience in personal injury law.

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