THE BLACK LAWYERS ASSOCIATION JOINS THE LSSA IN CONDEMNATION OF THE INTENDED CLAMPDOWN ON LEGAL PRACTITIONERS

The Black Lawyers Association (BLA) finds the call, by the Minister of Health (The Honourable Minister Aaron Motsoaledi), to deny members of public the right to be represented by the legal practitioners of their choice when seeking recourse or relief for the injustices and to some extent the physical violation they suffer in the public hospitals to be outrageous and repulsive. To accuse the legal profession for the problems the Department of Health is finding itself in will not assist at all. What the Minister of Health needs to do is introspection and investigate the true cause of massive lawsuits that are channelled to his department, as opposed to finger pointing. Blaming the legal practitioners for the offence they did commit will not vindicate the minister. The effective way which the Minister must pursue in avoiding legal actions against his department is to inculcate sense of accountability and duty of care in his employees and by providing the correct and adequate medical machinery in the public hospitals.

The attitude adopted by the Department of Health towards the legal profession explains the scant disregard towards the legal system in general and the legal practitioners in particular. The Minister’s main worry is the huge legal costs bill facing his department arising from the department’s disregard of the courts’ judgments. In a democratic state all are equal before the law. Even the government department must be subjected to law. We expect the Department of Health to honour court orders otherwise there will be execution of property and equipment.

BLA would like to remind the Minister that the right to have access to health care guaranteed to the people of South Africa in section 27 of the Constitution means a right to have access to proper and adequate health care free from medical malpractice and other unethical practices. The link between the right to have access to health care and human rights is inextricable, as such violation of health right is therefore a violation of human rights. Our members and members of the legal profession as a whole as vanguards of human rights and dignity as well as protectors and promoters of the Constitution are within their rights and constitutional imperatives, to pursue legal actions against the Department of Health if their clients’ rights are violated.

BLA finds it as a serious setback and a regrettable that our sister organisation, South African Medical Association (SAMA) has joined the fray in support of the Minister in the orchestrated assault on the rights of the downtrodden and victims of malpractice in the public health care system. SAMA, like the BLA must be heard to propagate for higher professional standards of its members when treating members of public. It sends frightening shockwaves for SAMA to preach against accountability and in a way sounds as if medical malpractice must go unpunished. We implore on all involved that impression must not be made that the medical and legal professions are antagonistic against each other. The truth is the two professions need and complement each other.
If the Minister of Health succeeds with his intended scheme, it is the poor who are going to be the victims of such a scheme. It is mainly the poor who visit the public hospitals and who in turn are victims of medical malpractice in the hands of the poorly equipped hospital staff and inadequate medical equipment and medication. These are the people who do not have access to medical insurance. In order to guarantee even the poor access to justice legal practitioners take cases, including medical malpractice cases, on contingency basis.

If the Minister is proud of the service he is providing to the nation in the hospitals under his jurisdiction, he must not be worried by lawsuits against his department, instead he must welcome same for it to act as constant reminder if the standards need to be reaffirmed.

In 2012 March when the Health Professions' Council of South Africa (HPCSA) launched a nationwide campaign urging patients to report unethical and conduct and other medical malpractice was alive to the fact that complacency and cover-up do not serve the medical profession any good. That is what we expect of the professional organisation. In as much as it may promote the profession, it must as much as it can protect the interests of the members of the public. It will be a dereliction of our duties and a sad day if Legal Practitioners were to abandon invoking legal remedies in particular for the poor and downtrodden flowing from the unreasonable apprehension that specialists in the medical profession will run dry for fear of legal suits.

We condemn the Minister’s intended move as it is ill-conceived for it does not address the problems in public hospitals but in a way exacerbate the already appalling situation. Equally, it is important to engage with stakeholders before making sweeping generalisations against the profession as we are witnessing recently.

Issued by P.B. MABUNDA

(President on behalf of the Black Lawyers Association)

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