

HPCSA kickback issue relating to neurosurgeon Dr Ian Weinberg

Background

In 1993 the Linksfield Park Clinic opened its doors. One of the requirements for the practice of state-of-the-art neurosurgery and the full spectrum of spinal surgery was an MRI scanner. Due to the high risk (cost) in purchasing this machine, the incumbent radiologists at the time requested that the larger neurosurgical and orthopaedic practices at the clinic commit to exclusively using the services of the resident radiology practice and their MRI scanner. In return the radiologists would include the referring doctors in a profit sharing company. It was indicated that the arrangement was acceptable from an ethical point of view and that advice in this regard had been obtained from appropriate medico-legal experts. This arrangement was subsequently implemented and continued for eight years.

Ruling

In 2003 the HPCSA reviewed this arrangement and decided that it was at best a “hazardous business arrangement” in that it predisposed to over-servicing of patients – a perverse incentive. No over-servicing however was ever shown/proven in the review. It was concluded that the payment of profit share could be regarded as “kickbacks” for patient referrals and in terms of the HPCSA, this transgressed ethical rules of practice.

Complicating the issue was the stated intention of the HPCSA to make an example of the implicated specialists (nine in total) so as to re-establish this particular ethical rule for the profession as a whole. The Minister of Health is on record as having endorsed this stance.

As a result of the ruling, certain penalties were imposed:

Dr Weinberg was ordered to repay the full amount received (R265 000.00 – received over a period of eight years) and to work one day per week for two years in a State hospital, in his specialist capacity. He duly complied with all requirements.

Final Assessment

There is general consensus amongst the medical and legal fraternity that this issue was blown out of all proportion. This was most likely consequent upon the need to make an example out of the involved specialists. Many have contended that merely being in private medical practice predisposes the unscrupulous practitioner to the perverse incentives of over-servicing. Therefore the real issue is not the paper trail of money, but rather, the professional standards of service delivery. In this particular case, no over-servicing occurred and expected professional standards were maintained. Profit sharing between the radiologists and clinicians was a private arrangement which did not impact negatively on any patient or medical funder.

Postscript

In 2011 a case of kickbacks paid by a radiology practice to specialists was investigated by the HPCSA. The radiologist was penalized but no action was taken against the recipient specialists. This brings into question the real agenda of the HPCSA in the 2003 judgment and the HPCSA interpretation and application of its own rules and regulations.