



RADIOLOGISTS PAID REFERRING DRS R2.34 MILLION



Chairman of the Professional Conduct Enquiry, Professor PJT de Villiers.

The second largest of five known beneficiaries of an alleged kickback scheme in which radiologists Illes and Partners paid at least R2.34 million to referring doctors told a professional conduct enquiry that he believed his payments were shareholder profits.

Testifying before a panel of the Medical and Dental Professions Board in Pretoria in early April, Dr Percy Miller said he was approached by Illes partner, Jeffrey Swartzberg, with an offer to own shares in a company that was hire-purchasing an MRI machine.

The neurosurgeon said he remembered signing 'certain documents', the contents of which he could not recollect, and shortly thereafter, on 7 March 1994, was 'surprised' to receive his first cheque, for an amount of R8 319.73.

Miller did not contest receiving a total of R609 331.30 through an account held by Illes and Partners bookkeeper Michelle Pietersma and after she resigned, another R53 356.03 through Solardale, a company subsequently set up.

He and four other referring doctors, neurologist Stanley Levy, orthopaedic

surgeon Leonard Nainkin, orthopaedic specialist Julius Preddy and neurosurgeon Ian Weinberg, have pleaded not guilty to receiving a total of R2.34 million in kickbacks between 7 March 1994 and 1 November 1999.

Miller said he would never have entered into any kickback agreement.

He cited an incident in 1991 when he started private practice, and a 'well-known radiologist in the city offered me kickbacks of R300 per MRI patient... I laughed at him and left the room'.

If he had thought that the Illes and Partners cheques were kickbacks he would have 'without doubt changed the scheme, I would have made sure that I got cash with no cheques and paper trails if I was indulging in illegal things and I certainly would not have run around the clinic picking up cheques from the table (they used to put them on the table or on the wall outside the X-ray thing sometimes - I certainly would not have just laughed it off and picked up the cheques and said thank you very much in a nice happy voice, which is basically what used to happen every now and then... so things would have been a lot different'.

Miller said he and the other referring doctors 'definitely understood that should the MRI scanner be ratified by the Medical Council all of them would stand surety for it.'

Miller explained that he saw the cheques as the 'paper trail' - and had sincerely believed they were 'a kind of a company profit, for want of a better word'. He said the cheques were often written for the beginning of a month but only 'surfaced in their (the Illes partners) pockets or in their hands or on the window, say on the 15th, 18th or 20th.'

He took the cheques home in his brief-case and gave them to his wife. The couple wondered who 'Pietersma' was and Miller concluded that 'it was something the X-ray people would do to get themselves out of a...tax hassle...nothing related to me'.

The case against Levy, the top earner at R1.018 million in alleged kickbacks, was withdrawn 'indefinitely' at the April hearing.

He denied that the bank had demanded or asked for any security from the referring doctors, saying this would be 'highly unusual'.

It was reliably learnt that he had entered 'sensitive' talks with the Health Professions Council of SA (HPCSA).

The doctors claim they were asked by Illes and Partners to stand security for a highly specialised R7.1 million MRI machine in case the radiology practice defaulted on monthly payments.

Miller said he and the other referring doctors 'definitely understood' that should the MRI scanner be ratified by the Medical Council all of them would stand surety for it.

'They (the Illes partners) said they were getting it rectified or sorted out through the Medical Council, so I wasn't worried,' he added.

Pietersma confirmed earlier that she had allowed her account to be used only on the clear understanding that it was in anticipation of final Medical Council approval being granted, which 'everybody had expected to happen'.

Mr Gerhard Cloete, former general manager of Medical Leasing Services (MLS), a wholly owned banking subsidiary of ABSA, testified that his bank conducted a feasibility study on whether there would be sufficient referrals to make the MRI machine



affordable. He denied that the bank had demanded or asked for any security from the referring doctors, saying this would be 'highly unusual'.

The HPCSA also led evidence that Weinberg failed to disclose additional income (totalling R265 339 in alleged kickbacks) to the Receiver of Revenue, which his lawyers argued was not taxable. The other referring doctors admitted to not having disclosed the additional income to the taxman.

Forensic auditor and an associate director of KPMG Services, Duncan Henry, told the enquiry that he was unable to find any reflection of this income when he combed Weinberg's financial statements and tax returns.

Pietersma told the hearing under cross-examination that she was unaware of 'the content of discussions' the parties had had over what the basis of payment through her account was.

She was not challenged on her earlier evidence that the doctors were offered 5% of the value of requests for specialist MRI scans and CAT scans and, later, 4.5% of the value of requests for all types of radiological examinations. In her evidence in chief, she said she would add up the amount earned from each doctor's referrals and subtract the VAT to work out each payment. She then made the cheques out to herself, adding her banking costs, before writing out cheques from her account.

The cheques were placed in envelopes with nothing explaining what they were for, and hand-delivered by one of the radiology practice partners.

Miller explained that he saw the cheques as the 'paper trail' – and had sincerely believed they were 'a kind of a company profit, for want of a better word'.

An application lodged with the Pretoria High Court by the referring doctors asking for a review of the HPCSA preliminary committee decision to hold the professional conduct enquiry, pending their appeal against the decision by the professional conduct committee, was dismissed with costs on 20 February this year. They claimed that the HPCSA reneged on a deal offering them indemnity 'for full and frank disclosure'. The HPCSA denied this, saying the referring doctors failed to meet the indemnity conditions it set.

A concurrent Medical and Professions Board enquiry against Illes and Partners is being held into alleged overbilling and overservicing and improper and inaccurate billing systems for patients and medical aids.

The radiology practice partners, Drs Jozsef Illes, Jeffrey Swartzberg, Leon le Roux and Herman Uys, have pleaded

not guilty to fraud, constituting disgraceful and improper conduct. All but Uys were also charged with and pleaded not guilty to obstructing the HPCSA hearing by threatening and intimidating their own employees and presenting falsified, fabricated documents.

This enquiry resumed on 5 May. The enquiry against the referring doctors was due to resume on 27 May.

In papers before the panel, Freddy allegedly received kickback payments totalling R127 125.44 through Pietersma's account and subsequently R31 667.52 through Solardale, Levy R886 968.47 and subsequently R131 750.90, while Nainkin was paid R121 576.36 and then R16 649.53.

Messrs Grant Kaplan and Friedgut instructed Peter Pauw SC and Steven Farell on behalf of the respondents while Tebogo Malatji instructed Mike Maritz, SC and Kgomotso Moroka for the HPCSA.

Eugene Sklar instructed Errol Price on behalf of Dr Weinberg.

Professor PJT de Villiers chaired the MDPB panel and was assisted by Drs AAMOosa and PR Makhambeni.

The panel is being advised by the former Judge President, Mr Justice CS Eloff.

Chris Bateman

MPUMALANGA'S 'DRUG DEALING' DOCS

The Organised Crime Unit in Mpumalanga has arrested and charged 40 doctors and seven State pharmacists and nurses with theft and Medicines Control Act violations after a lengthy undercover operation involving scores of 'sting' operations.

Described by seasoned detectives as the biggest criminal scam involving medicines in living memory in the province, the case involves government-employed clerks, nurses, assistant

pharmacists and pharmacists 'fencing' stolen medicines to doctors.

The detectives said it was 'not so much one huge crime syndicate as a whole bunch of smaller operators taking advantage of a systemic breakdown in State drug distribution'. The losses to the province are believed to run into tens of millions of rands.

The Mpumalanga Health Department was last month placed under curatorship, effectively removing

decision-making powers from its controversial MEC Sibongile Manana.

Mpumalanga Premier Ndaweni Mahalangu said this was because of a 'damning report from the auditor general, the province's standing committee on public accounts and persistent complaints from communities throughout the province'.

Manana faces possible contempt of court charges for allegedly failing to provide Nevirapine.