



BEHAVE + PAY COSTS, HPCSA TELLS GUILTY DRS.



Dr Percy Miller and Dr Julius Preddy.
Picture: Beeld

The four Linksfield Clinic doctors found guilty of receiving kickbacks for referring patients to radiologists Illes and Partners must avoid any similar offence for five years or face suspension from the register for five years.

They must also pay the R1.23 million which they accepted in kickbacks to the Health Professions Council of South Africa, (HPCSA) to help it recoup the legal costs it incurred in the probe and holding the hearings.

The laborious and intricate hearing which lasted two years, also sentenced Drs Julius Preddy, Leonard Nainkin (orthopaedic surgeons) and Ian Weinberg (neurosurgeon), to work in a public hospital once a week for the next two years.

Dr Percy Miller's (neurosurgeon) punishment was harsher at twice a week for two years.

The now Australian-based neurologist Dr Stanley Levy was granted indemnity after admitting that he lied to cover up receiving R882 690 in kickbacks and perverse incentives over 5 years.

His colleagues, found guilty of professional and disgraceful misconduct, protested their innocence to the end.

Levy belatedly gained indemnity from prosecution for 'coming clean' after the HPCSA retracted an identical offer made to all the referring specialists.

The Medical and Dental Professions Board (MDPB) professional conduct

committee concluded that the remaining doctors could not rely on indemnity as they had misled the HPCSA in asking for it and were 'not frank and truthful' in their disclosures.

Once the investigation began there were 'efforts to deceive' the HPCSA and evidence of collusion between the practice of Illes and partners and the referring doctors.

Levy told the professional conduct hearing that Illes partner Geoffrey Swartzberg approached him and urged him to deny receiving any kickbacks. Swartzberg had instructed him to say that he (Levy) and his four referring colleagues were partners in a company which had purchased an MRI machine and that the payments were 'dividends' in return for signing surety for the purchase of the MRI machine.

Levy subsequently entered solo negotiations with the HPCSA and was conditionally re-granted indemnity, much to the consternation and anger of his co-respondents.

Shortly thereafter Josef Illes accompanied Swartzberg and reiterated to Levy that he must stick to this story.

'In a misguided attempt to assist Illes and Partners and to secrete my involvement in the matter, I acceded thereto,' Levy confessed.

This dramatic and surprising turnaround brought clarity to a hearing marked by constant delays and failed litigation in which the referring doctors challenged the HPCSA's withdrawal of its conditional offer of indemnity.

Levy told the MDPB hearing that he secured rent-free rooms at the Linksfield Clinic in Sandton by trading a similar offer made to him by Netcare MD, Jackie Shevel.

Shevel had offered him rent-free accommodation at the then financially troubled Sunninghill Clinic – if he stayed on.

Dr Peter Kalish, the founder and director of the Linksfield Clinic, however then informed Levy that he had made 'arrangements' with Illes and Partners to pay Levy's Linksfield rental.

Kalish had 'made it plain' that Illes and Partners would derive a 'distinct benefit' from the arrangement and indicated that this would 'in the very nature of things, result in my patients using their services,' Levy testified.

Levy's rental payment by Illes and Partners stopped in 1999 when Netcare acquired control of the Linksfield Clinic and decided that certain medical specialists, including neurologists, would no longer be required to pay rent.

Swartzberg then told him about a 'joint venture' Illes and Partners had with some of the other doctors at Linksfield and offered him a 'percentage' of fees charged by the radiologists for work performed on patients referred.

Knowing that no such venture had been 'formally or lawfully' established, nor approved by the HPCSA, Levy said he then began receiving payments from Illes and Partners on a monthly basis.

Later he learned that the payments were based on 4.5% of charges levied by the radiology firm (excluding VAT and bad debts) for all patients he referred to them.

When, in 1995, he acquired a partner and his workload increased, Swartzberg had organised for Illes and Partners to contribute towards the salary of a secretary.

After several payments for referrals he had asked Swartzberg whether they were legal.

Swartzberg said the matter was 'being legitimised' by making the referring doctors shareholders in a joint venture



so the payments could be reflected as 'dividends'.

Illes and Partners later produced a document for him to sign detailing the formation of such a joint venture company.

However he was never subsequently advised of any shareholders' meetings nor did he discover whether the company actually existed.

Levy further confessed that his initial statement to the HPCSA investigators was false and that, given his 'failure to make full disclosure', their decision to withdraw earlier indemnity given to him (and the other doctors) was 'wholly correct'.

Levy subsequently entered solo negotiations with the HPCSA and was conditionally re-granted indemnity, much to the consternation and anger of his co-respondents.

He strongly refuted suggestions by Illes and Partners that he and the other referring doctors had threatened to refer patients elsewhere unless they were paid for this and reiterated that the approach had come from Swartzberg. On paper, Levy was the biggest beneficiary of the kickbacks.

Dr Richard Tuft, President of the Radiological Society of South Africa, expressed 'delight' at the verdict, calling it a 'landmark ruling'.

Tuft said it reflected the determination of the Council to crack down on corrupt doctors who affected the image of the profession 'by accepting or giving bribes'.

'Our patients must have absolute confidence and trust in us and know that the treatment they receive is appropriate and not influenced by doctors' financial considerations.'

Giving evidence in mitigation, a fellow Linksfield specialist surgeon, Dr Martin Lebos, said that striking them from the register would rob the country of some of its best doctors.

He added pointedly, 'If you take these guys out you will need to remove 75% of the profession'.

Asked by committee member Dr PR Makhambeni whether he was suggesting that because most of the doctors in the country were receiving kickbacks, the committee should be lenient with the respondents, Lebos replied, 'no'. He described the respondents as 'the cream of the cream,' and with the exception of Nainkin, all 'at the height of their careers and earning powers'.

Weinberg, although the co-developer of the country's first prosthetic lumbar and cervical disc implant, was 'gullible' and had 'zero business acumen'. 'He has good ideas but not the faintest idea of how to put them into practice - he wouldn't have known what he was getting into,' said Lebos.

Miller accused the HPCSA of selectively discriminating against him and his fellow respondents when it knew other doctors were doing the same thing.

Sister Barbara van Dyk, a matron at Linksfield Park Hospital who scrubbed with Miller and Preddy and is currently studying for her Masters Degree in Ethical Practice, described Miller as a man who 'repairs the dignity of the head and the soul'.

Miller worked 'all hours', while Preddy was 'meticulous and fanatical about detail'.

Miller was virtually without peer in pain management in South Africa, uniquely using radiofrequency treatment for trigeminal neuralgia and sympathetic dystrophy and nerve route gangliotomy, the committee heard.

In an emotional outburst for which he later apologised, Miller said his patients did not deserve to have 'this junk' pushed into their faces because of 'the despicable nature of what has happened'. He confirmed to Mike Maritz for the HPCSA that he found the committee verdict 'junk' because he did not consider himself to have knowingly

done anything wrong. He therefore felt no remorse.

Miller said that if he were struck off the register his life would turn into a 'wasteland' and accused the HPCSA of selectively discriminating against him and his fellow respondents when it knew other doctors were doing the same thing.

He accused Dr Richard Tuft, president of the Radiological Society of SA, which spearheaded the investigation four years ago, and former colleagues Levy and Nel, who both testified against him, of having 'selective morality'.

He told committee chairman, Professor PJT de Villiers, that while he rejected the findings of the committee he agreed that the system he was involved in was 'open to abuse and wrong'. His awareness of the problem had been 'evolutionary'.

Professor Christopher Joseph, Vice President of the SA Oncology Society and member of SAMA's Specialist Private Practice Committee, testified that while it might be possible to employ the respondents in the public service, they would probably have to take junior posts. However, their skills were vitally needed in private practice.

Joseph said the entire profession was 'living in a perverse system - the only one in the world where funders pay providers directly'. About 30 medical schemes had 'managed to get away from this - the only way you should make money is through professional fees,' he opined. SAMA needed a better programme of ethical education, he added.

Another colleague, Dr Dimitri Devolous, said the respondents had been sufficiently punished by the media and the public and their practices damaged irreparably.

While the committee had a duty to 'send out a message' to the profession and the public, the guilty doctors remained a major asset to the profession and the community.

Chris Bateman