



## SMALL MERCIES FOR 'OUTFOXED' SURGEONS



Dr Percy Miller.

Dr Stanley Levy, the former Gauteng neurologist who testified against four referring colleagues and co-recipients of R2.65 million in radiology kickbacks, 'check-mated' them with legal sleight of hand, an appeals committee has heard.

Levy is practising in Australia, having been granted a Certificate of Good Standing from the Health Professions Council of South Africa (HPCSA), with whom he cut a deal last year.

He admitted at the original professional conduct enquiry to receiving R882 690 from Illes and Partners over a 5-year period, more than any of his co-accused colleagues. This represented a 4.5% cut of the radiology levies on patients he referred.

Levy testified that his initial statement to HPCSA investigators was false and 'a misguided attempt to hide my involvement'. He confessed to knowing that no formal joint business venture between the referring doctors and Illes and Partners existed or was approved by the HPCSA.

His former referring colleagues maintain that Levy and radiologists Jozsef Illes and Jeffrey Swartzberg

conned them into believing their monthly cheques were dividends from a business venture involving an MRI scanner (for which they 'stood surety').

The embittered referring surgeons claim they've been singled out and made political scapegoats by an HSPCA eager to portray itself as cracking down on professional misconduct.

Last month the Appeals Committee of the Medical and Dental Professions Board (MDPB) confirmed hefty fines for the three referring surgeons who appealed – fines equaling the kickback amounts they received.

However it softened the blow by doubling the period in which the money must be paid and halved the public hospital community service time of Gauteng neurosurgeon, Dr Percy Miller, the most vocal and strident of the trio.

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Committee Chairman, Judge van der Walt, a former Judge President of the Transvaal, said Miller's alleged contempt of original proceedings could not be counted as an aggravating factor in sentencing. The ethical environment of a professional conduct hearing simply did not make provision for this.

Miller openly told the original enquiry that he found its verdict 'junk' because he did not consider himself to have knowingly done anything wrong.

Reducing Miller's twice-weekly (for 2 years) public hospital community service penalty to once per week, the appeal committee also rejected the original committee's reasoning that higher kickbacks to Miller showed he was greedy and had therefore over-serviced.

Judge van der Walt said there was no evidence to show that Miller or his co-appellants, Julius Preddy and Leonard Nainkin, had over-serviced. The reduced public hospital community service penalty brought Miller in line with the sentencing of fellow appellants and with Dr Ian Weinberg, who chose not to appeal.

Miller (fined R765 153), Preddy (R158 792) and Nainkin (R140 225) had their fine payment period to the HPCSA lengthened from 6 months to 1 year.

Weinberg was fined R265 339 at the original hearing. The appeal committee confirmed the suspension for 5 years of their main penalty – suspension from practising for 5 years.

Levy, who suddenly turned 'state witness' after provisional indemnity for all five referring doctors was withdrawn, was scathingly attacked in their appeal last month. The HPCSA withdrew the indemnity because the five 'defaulted' on full disclosure, but accepted Levy's subsequent confession and testimony.

The remaining doctors claim in their appeal that it was Levy who initiated – and then hid – the entire kickbacks scheme from them.

They say he colluded with Illes and partners to convince them that they were legitimate recipients of dividends in a company structure approved by the Medical Council.

When the radiologists' premises were raided in March 2001, Levy told Miller that they urgently needed legal representation and persuaded the surgeons to hire his brother-in-law, advocate Johnny Kaplan, who confidently assured them that Medical Council prosecutors would 'grow old and be dead' by the time the matter became an issue.

The surgeons said Kaplan's entire strategic approach was predicated upon protecting Levy who was 'at all times



intimately aware of the difficulties Council had with the receipt of the kickback/dividend cheques. They said that they were not aware that they were receiving (MRI) payments on a case-by-case basis until well into the HPCSA probe.

The appellants claimed that Levy and Kaplan initially had no intention of co-operating with the investigation.

At a legal briefing at a defence advocate's home during July 2001, Dr Levy's wife, who helped him run his practice, had mentioned attending dog training with Illes and Partners secretary, Mrs Michelle Pietersma.

Mrs Pietersma's 'little black book' of all referral payments she made, proved pivotal in the kickbacks hearing. Mrs Levy told the briefing that she would 'go down to Mrs Pietersma and count up the number of scans to see what their earnings were for the month'. Dr Miller said all three appellants 'sat bolt upright upon hearing (her say) this'.

Only Dr Levy had looked embarrassed and 'tried to keep her (his wife) quiet'.

Miller said that it was at this point that they began reviewing their legal representation.

On a website, called '**perverse incentives.co.za**,' set up by Miller to 'put my side of the story', he reproduces a letter written by him to the Australian High Commissioner in which he questions Levy's admission to that country. He writes that if proceedings against Levy had run their course, Levy would have been convicted of disgraceful conduct and 'in all probability struck from the roll'.

'His conduct was not only unethical and morally reprehensible but possibly criminal as well.' Miller asks the Australian High Commissioner to explain why a person who had admitted guilt and was party to irregularities over large sums of money, was granted the right to settle, live and work in Australia.

He sees the HPCSA as using their case to help publicly paint itself as cracking

down on undesirable business practices, perverse incentives, over-servicing and kickbacks.

Testifying in mitigation of sentence at the original hearing, fellow Linksfield specialist, Dr Martin Lebos, said the only even-handed way to strike the surgeons from the register would have been 'to take out 75% of the profession'.

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Professor Christopher Joseph, Vice President of the SA Oncology Society and a former member of SAMA's specialist private practice committee, claimed the entire profession was 'living in a perverse system – the only one in the world where funders pay providers directly'.

On his website Miller claims that a study of HPCSA professional conduct cases shows disproportionately light sentences meted out to doctors who defraud medical aids or cause harm to patients. 'No patient or medical aid ever suffered from our actions which ultimately came down to some sort of fee-splitting arrangement – the radiological bill was the same – only, some of it went to us, whether legally or illegally, knowingly or unknowingly is besides the point.'

The Board of Healthcare Funders (BHF) has warned medical aid schemes off the surgeons, advising them to pay their members directly and asked the surgeons to recover any outstanding payments themselves. This has incensed Miller and his colleagues.

The ending of the saga coincides with moves by the HPCSA to have community representatives chair both professional conduct committees and

preliminary committees of enquiry and to increase maximum fines.

The HPCSA cites the 'paying back' of profits received by the guilty surgeons as 'a clear indication that no practitioner will enjoy any financial benefit to which they were not rightfully entitled'.

Last year, radiologists Jozsef Illes, Jeffrey Swartzberg and Leon le Roux pleaded guilty to over-billing and creating perverse incentives. In a plea-bargain settlement with the HPCSA they were effectively suspended from their practices for between 3 and 18 months and paid fines of between R50 000 and R150 000. Another partner, Dr Herman Uys, pleaded guilty only to a charge of over-billing as a result of negligence and received a conditional 3-year suspension, suspended for 5 years.

The radiologists irregularly paid at least R2.3 million to the referring doctors between 1994 and 1999.

The executive committee of the MDPB believes the radiologists' sentences are too lenient and has asked the full board not to ratify them but to send them back to the professional conduct hearing for review.

Spokesperson for the HPCSA, Anina Steele, told the *SAMJ* that the matter was on the MDPB agenda for mid-September. She dismissed the referring doctors' charge that they were being made political scapegoats, saying Levy 'came clean – his colleagues to this day do not see what they've done wrong. He saw the light, they didn't'.

Steele said the criteria for a Certificate of Good Standing, granted to Levy in March this year, were that there be 'no complaints pending and the doctor be registered and not have been found guilty of any unprofessional conduct'.

Dr Levy was never tried so it was never legally proven that he received the R882 690 – in spite of him having admitted it, she added.

**Chris Bateman**