'They said according to our last discussions I was out of theatre and that was it,' she said.

On 23 June this year, nearly a month after her written request to once again do theatre work, Dr B Mbule, the acting CEO, wrote to her asking her to elaborate.

'You state that you are more than willing to work in all the theatre disciplines. Does this statement include scrubbing for all emergencies, coming into theatre for example, any evacuation for retained products of conception? We await your answer in writing.'

The Doctors For Life's voluntary legal advisor, John Smyth, QC, responded by asking what conditions, if any, the hospital wished to impose if she were to return to theatre.

No reply was forthcoming and all subsequent queries were referred to the Gauteng Health Ministry.

Smyth said that by early September the Ministry had yet to reply to 3 subsequent letters.

Charles told the *SAMJ* that she took sick leave to undergo psychotherapy 'because I was starting to believe that I was the only one, the real troublemaker'.

She subsequently 'decided there is no way out of this and it's not fair, so I resigned'.

She began a new surgery job with the Vereeniging Medi-Clinic in September – after being assured that they have no TOP ward.

Doctors For Life are demanding Charles be allowed to return to theatre work, R50 000 in damages and an unconditional apology.

Smyth told the *SAMJ* that he expected a preliminary Equality Court hearing by October.

He filed papers in late August under the Promotion of Equality and Prevention of Unfair Discrimination Act.

'We may be referred to the High Court if the Equity Court deems it a constitutional issue, and it could then leap-frog to the Constitutional Court,' he added.

The State Attorney dealing with the matter, Mr M Lakabe, confirmed having taken instructions from senior managers at Kopanong Hospital but said he had yet to receive anything on paper from lawyers for Charles.

'At this stage it remains just a threat,' he said.

Chris Bateman

TIME WILL JUDGE 'SCARY' DISPENSING REGULATIONS

Pinelands pharmacists Denis Landau and Dinesh Dalla comb the dissenting minority judgment of Judge Jeanette Traverso for any potentially profit-saving pearls after being hit by the seemingly landmark judgment last month. Picture: Chris Bateman

Just days after the Cape High Court dismissed with costs the New Clicks and Pharmaceutical Society of South Africa's (PSSA's) attempt to suspend the new national law on dispensing fees, pharmacists in Cape Town closed their doors in protest and fear of prosecution. Across the Cape Peninsula pharmacists put up notices objecting to 'untenable' dispensing fee ceilings and advising customers to go to public hospitals for their drugs.

The closures were sparked, some said, by a complaint lodged with the Fish Hoek police that one of their number had flouted the new dispensing rules by charging more than the maximum professional fee of R26 (or 26% of any drug below R100) for scheduled medicines.

For Schedule 1 and 2 medicines, licensed dispensers may charge a maximum professional fee of 16% of the single exit price, up to a maximum fee of R16.

In what has been a united, determined, and some say clumsy effort by government agencies to make medicines more widely affordable, the national health department's head of legal services, Debbie Paermain, told customers they could help keep

chemists in line by reporting overcharging.

The anger and fear at what pharmacists and dispensing doctors say spells economic doom, led to a virtual Peninsula-wide shut down of chemists for a day.

The long-awaited court verdict included a little-known but powerfully dissenting judgment by Judge Jeanette Traverso.

It was almost point for point at odds with her two colleagues, Judges James Yekiso and John M Hlophe (Judge President of the Cape High Court).

She made it clear that she would have allowed the review to succeed with costs, labelling the manner in which the Pricing Committee conducted itself during oral presentations as 'improper' and 'haphazard'.

Judge Traverso said leaving it mainly to Department of Health officials to receive and summarise oral submissions by stakeholders had deprived the stakeholders of the collective wisdom and expert opinions of the Pricing Committee.

The role played by the health department in the receipt of oral submissions was 'analagous to the interference of non-members of a committee in the deliberations and decision-making process'.

She said she also found it 'impossible' to determine how the single exit price was to be calculated, because the definitions of and regulations around the logistics fee it included were contradictory.

As for manufacturers using 'international benchmarks' when pricing and/or applying to the health minister for annual price increases, 'no objectively ascertainable basket of countries' was stipulated.

Judge Traverso said the Pricing Committee misconstrued their function and the purpose of the enabling legislation, and therefore took into account 'irrelevant considerations', forgetting that the emphasis was on 'transparency and consistency'.

The Pricing Committee saw their role as one of reducing the prices of medicines by statutory price controls 'at all costs'.

Although Clicks and the PSSA had made it clear in their founding papers that a pharmacy's mark-up would have to be well in excess of 26%/R26 in order to remain viable, Traverso 'searched in vain for any reasoned consideration' of whether this would cover the pharmacists' operating costs.

Judge Traverso said she was left with the very distinct impression that the fee fixed was 'no more than a thumb suck based on a very simplistic "one size fits all" approach'.

'In my view it is clear that the Pricing Committee mistakenly assumed that this would be equivalent to a profit in the region of 25 - 26%'.

The true economic impact of fixing the dispensing fee at this level was 'never discussed in any rational manner'.

Judge Traverso said she was left with the very distinct impression that the fee fixed was 'no more than a thumb suck based on a very simplistic "one size fits all" approach'.

To suggest that pharmacists were at large to charge fees stipulated in the tariff of fees (that had no force of law) was seemingly 'irrational and contrary to the entire scheme of the Act'.

She dismissed national pharmacy planning chief Dr Humphrey Zokufa's contention that no 'substantial evidence' was presented to show that any pharmacy would be devastated by the recommended dispensing fee.

This was inconsistent with the Pricing Committee chairperson, Professor Di McIntyre's evidence that New Clicks and 'a host' of interested parties testified that the new dispensing fee would condemn pharmacies to operate at a loss.

The Committee appear to have adopted an indifferent attitude to the allegation that their recommendations would lead to the closure of many pharmacies and that this would in turn deprive consumers of the medicines and primary health care services which pharmacies provide.

Instead the Committee had suggested, with no sound economic basis, that pharmacists expand their 'front-shop' activities (cosmetics, gifts, etc.) to avoid potential financial disaster.

Traverso said that on the respondents' own papers, the current regulatory scheme left it to pharmacists to charge whatever they wanted for certain professional services.

She said the Pricing Committee's recommendations on the dispensing fee were premised on a 'confused conflation between mark-up and profit'.

The regulations would 'materially and adversely' affect the rights of the public or, at the very least, a group or class of the public, Traverso concluded.

Judge Yekiso and Judge Hlophe however said that most pharmacies' front-shop activities accounted for a relatively small proportion of sales (less than 17% on average), yet the front-shop occupied about 80% of floor space.

The conclusion was therefore 'inescapable' that costs such as rent, utilities and non-pharmacist staff were attributable to front-shop activities.

It was mainly for this reason that the Pricing Committee concluded that it was undesirable for a patient or consumer to bear costs that were not connected to dispensing services.

The two judges described as 'sheer speculation' assertions that the regulations would cause wide-scale harm to the pharmacy profession and result in significantly fewer pharmacies.

The Pricing Committee had been at pains to acquire information

demonstrating the actual costs of dispensing medicine and the number of prescriptions attended to in any one day of a business operation (the PSSA said this came to a daily average of 70).

While it was given front-shop costs, the Pricing Committee was not given the necessary breakdown reflecting the complete costs of dispensing activities.

The Committee had struck a balance between the pharmacists' need for professional remuneration and the need to make medicines and scheduled substances affordable.

'Just because the applicants might disagree on the dispensing fee that was finally recommended and accepted, does not in itself mean that it is inappropriate,' Judge Yekiso wrote.

The majority judgment said regulations that contemplated publication by the Director-General of Health of a methodology for conforming to international pricing benchmarks did in fact exist.

This kind of information 'ought to be readily accessible' to manufacturers and importers of drugs, either through international price lists or trade representatives.

There was no evidence to suggest that manufacturers and importers had had any difficulty in complying with the single exit price regulation since it was applied on 2 June this year.

The judges said they were therefore unable to find any basis for the 'considerable confusion' complained of between the determination of the drugs price and the logistics fee.

An application for leave to appeal against the majority ruling due on 2 September was postponed until 20 September.

In the meantime pharmacists began charging for deliveries, phone calls to medical aids, faxes and consultations, with several adding on an 'administration fee' of between 10% and 15%, something the Department seemed legally confused about.

Zokufa urged customers to be aware that they could be 'charged for additional things', and was initially unsure whether the *ad hoc* 'administration fee' was legal.

While some medicines have come down in price, certain private hospitals have increased their ward and theatre tariffs to compensate for the expected loss in profits.

Zokufa said the regulations were 'firmly in place' until the outcome of the appeal application, or unless an interim order to have them suspended was granted.

Chris Bateman

The South African Medical Journal

100 years ago: Pretoria Medical Society

A meeting was held on 13 May in the Government Library. Dr Kay read a paper on malaria. He commenced by shewing that there are local differences in malaria, every malarious district having some peculiar symptom or symptoms. After enumerating the common symptoms, he went on to describe the parasite and its mode of introduction. In South Africa, as he pointed out, it is common for ague to be at first quotidian, then tertian, and quartan as convalescence approaches, cases varying greatly according to the amount of poison introduced into the system. Latent malaria is exceedingly common in malarious districts, where nearly all affections are complicated with it, or bear its impress. Dr Kay traced the advent of malaria into Pretoria, where, he contended, the opening of the soil on various occasions had much to do with outbreaks, the mosquito being unknown in those days, and he suggested the possibility of infection through the lungs as well as by the mosquito. As regards treatment, he laid stress upon Warburg's tincture preceded by a weak purge, also on the hypodermic use of quinine, and in children its introduction per rectum, and he deprecated the use of tabloids.

50 years ago: Colds and controls

The common cold is one of many diseases for which wild claims for certain remedies have been made. Thus extravagant claims were made a few years ago for certain anti-histamine drugs, but when hundreds of patients were treated by an expert committee, half of the patients receiving tablets containing the drug while the other half received inert dummy tablets, it was found on statistical analysis, that the results were almost as good with the dummy as with the drug. It is interesting to note too that unpleasant side-effects attributed to the drug occurred with the same frequency in both groups... The two groups should be as nearly equal as possible for the experiment [and] one absolutely essential requirement for a valid experiment is that allocation to the two groups must be random. Errors of assessment must be avoided, best by the use of the double blind technique, in which neither the doctor nor the patient knows which patients receive dummy treatment; the controls receive dummy tablets similar in appearance, taste and smell to the real tablets... It is only by proper planning of an experiment and precautions such as indicated by Gaddum[1] that 'the subjective opinions of a group of patients can be interpreted with mathematical precision'.

1. Gaddum JH. Proc Roy Soc Med 1954; 47: 195.