Dear sirs / ladies

RELPAG & JASA v. HPCSA & Minister of Health & Board of Healthcare Funders of SA & Others)

We note that you have written a letter to a RELPAG member, Lindsay Hardman, refusing payment on the grounds that treatment of a patient “falls outside [her] scope of practice in terms of [her] registration ... as a Counselling Psychologist.”

Please note that as is evidenced in the attached court order in the above matter, the Recognition of Life Long Learning in Psychology Action Group (ReLPAG) and the Justice Alliance of South Africa (JASA) successfully challenged the validity of the Scopes of Practice which, since 2011, created the impression that psychologists may be limited only to providing the psychological services which are listed under the scope of practice for the registration category in which the psychologist is registered. The Cape High Court declared the regulations invalid, in terms of a court order agreed to by the Minister of Health, the HPCSA and the Professional Board for Psychology, as well as the amici curiae (friends of the court), the Clinical Psychology Forum, the Educational Psychology Association of SA and the Rural Health Advocacy Project and the applicants. The Board for Healthcare Funders has agreed to abide by the court order. The order of invalidity has been suspended for two years to allow the Minister to consider replacing the regulations appropriately.

The order implies that those medical aids who have failed to pay psychologists who do work outside the scope of practice (despite the psychologist having competency in the relevant area of practice) due to the regulations, will have no reason to continue to withhold payment. It would be both unreasonable and opportunistic to continue to rely

Executive Board
Msizi Cele (Chairman), Stephen van Rhyn (Vice-Chairman), Tendai Musikavanhu, Grant Gunston, John Smyth, Nyari Pariola, Joel Sangster
on these regulations during the period set for public consultations and a reconsideration of how psychological practice may best be regulated.

The applicants approached the court with two issues. One of these issues has been resolved by the court order, but there is a remaining dispute between the parties as to the proper interpretation of the regulations (Part A of the application). We note from your letter that you have, with respect, misinterpreted the regulations. The purpose and effect of the regulations are to define the scope of the entire profession of psychology, rather than delimiting the professional (registration) categories and consequently there is no question of the regulations limiting any psychologist to a particular type or category of work as you suggest. Please see the attached opinion from Advocates Darryl Cooke and Gavin Brown for more detail. Based on the legal advice received the applicants contend that the law allows psychologists of any registration category to do any work in respect of which they can demonstrate their competence, as is set out in the Ethical Code governing psychologists.

Part A of the application has been postponed in terms of the court order, but the applicants can approach the court again at any time in order to have this aspect adjudicated upon. Should you persist with your approach in refusing payment for extra-scope work based on the regulations, we will have no other option but to approach the court to make an order spelling out the correct interpretation of the regulations. Certainly any decision to refuse payment to a psychologist who is competent but working outside their scope, based on the regulations, amounts to a disregard for the constitutional right to healthcare (which includes psychological care) of South African patients, and a flagrant indifference to the tenure and implications of the High Court order.

Yours faithfully.

John Smyth Q.C.
CEO of JASA