



**JOINT SUBMISSION BY SECTION27 AND THE TREATMENT ACTION CAMPAIGN**

**ZONDO COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION  
AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE**

**FEBRUARY 2020**

SECTION27 and the Treatment Action Campaign (TAC) make this joint submission. It draws heavily on work done by Spotlight. Spotlight is a joint SECTION27/TAC publication that is editorially independent of the two organisations. Spotlight is a member of the Press Council and subjects itself to the Press Code. In support of this submission, Spotlight has shared both information that is already in the public domain through its published articles and further unpublished information. Spotlight has taken steps to protect the identity of sources where necessary.

SECTION27 is a public interest law centre that seeks to achieve substantive equality and social justice in South Africa. Guided by the principles and values in the Constitution, SECTION27 uses law, advocacy, legal literacy, research and community mobilisation to achieve access to healthcare services and basic education.

The Treatment Action Campaign (TAC) was founded in December 1998 to campaign for access to AIDS treatment. Today the TAC continues to represent users of the public healthcare system in South Africa, and to campaign and litigate on critical issues related to the quality of and access to healthcare. The organisation currently has over 8,000 members and a network of 182 branches and provincial offices in seven of South Africa's nine provinces.

## Structure of the submission

Our primary concern is the detrimental impact that corruption has on the quality of services provided in the public healthcare system in particular. Corruption is directly influencing the lives of many people living in South Africa. **Corruption impacts whether or not an ambulance comes in time or at all, whether that ambulance - if it comes - is properly equipped and staffed, or whether or not surgeries are delayed or cancelled due to problems with theatre equipment.** This submission aims to illustrate that corruption has a direct impact on people's constitutional rights to access health care services.

Apart from the impact corruption has on specific areas of service delivery, it also has a broader systemic impact corruption on the public healthcare system. In some cases, under-qualified persons have been appointed to important positions to - we believe - oil the wheels for corruption. In some instances, qualified and committed persons have been pushed aside because they stood in the way of corrupt activities. We believe that much management capacity has been lost in the public healthcare system in this way and that this loss of capacity is a key contributing factor to the low staff morale and the poor quality of service in much of the healthcare system.

We also wish to make the commission aware of a 2015 academic article by Professor Laetitia Rispel and others titled "Exploring corruption in the South African health sector" published in the journal Health Policy and Planning.

Rispel states that,

*"Notwithstanding the lack of global validated indicators to measure corruption, our findings suggest that corruption is a problem in the South African healthcare sector. Corruption is influenced by adverse agent selection, lack of mechanisms to detect corruption and a failure to sanction those involved in corrupt activities. We conclude that appropriate legislation is a necessary, but not sufficient intervention to reduce corruption. We propose that mechanisms to reduce corruption must include the political will to run corruption-free health services, effective government to enforce laws, appropriate systems, and citizen involvement and advocacy to hold public officials accountable. Importantly, the institutionalization of a functional bureaucracy and public servants with the right skills, competencies, ethics and value*

*systems and whose interests are aligned with health system goals are critical interventions in the fight against corruption.”<sup>1</sup>*

The Rispel article suggests that much of what we identify in this submission are systemic weaknesses that have been around for some time. While these weaknesses pre-date what is now generally referred to as state capture, we believe that these weaknesses were exploited with particular abandon and impunity during the state capture years. In addition, while corruption is apparently widespread and often opportunistic, it does appear that some of the corruption we identify was coordinated across provinces and involved at least some players in the wider state capture project.

The Special Investigating Unit (SIU) has recently recognised the health sector as highly susceptible to corruption and its review of the health sector indicated a range of corrupt practices that include the sharp increase in fraudulent medico-legal negligence claims, medical aid fraud, regulatory weakness and compliance enforcement as well as pharmaceutical companies’ anti-competitive practices in contravention of legislation.

We will deal with the following issues in turn:

- Ground ambulance contracts with the company Buthelezi EMS in the Free State and North West;
- Aeromedical contracts with the joint venture Buthelezi HEMS in the Free State, North West, Mpumalanga and Limpopo and the role of National Treasury in these contracts;
- A medical equipment contract with the company Mediquip Hub SA in the Free State;
- Unlawful clinical trial and contract with the company ReGenesis in the Free State;
- Various other contracts and cases of concern in various provinces.

Finally, we will provide some common, systemic problems and problematic dynamics in government relating to health and corruption.

---

<sup>1</sup> Rispel, Laetitia C., Pieter de Jager, and Sharon Fonn. "Exploring corruption in the South African health sector." *Health Policy and Planning* 31, no. 2 (2015): 239.  
<https://academic.oup.com/heapol/article/31/2/239/2355603>

## **Ground ambulance contracts with the company Buthelezi EMS in the Free State and North West.**

In August 2013, Professor Martiens Schoon published an article in the South African Medical Journal showing that maternal mortality in the Free State decreased from 279/100 000 live births during 2011 to 152/100 000 live births during 2012 due to the purchase of new ambulances and the expansion of the state-run inter-facility transfer service. The study offered a vindication that investing in a state-run inter-facility transfer service could save lives.<sup>2</sup>

Towards the end of 2013, mere months after the publication of the SAMJ article, the Free State Department of Health decided to outsource its inter-facility transfer service (ground ambulance service) to a private company. We have not been provided with any reasons for the decision to outsource this service. They were the first of only two provinces to do so (the North West would follow). Other provinces make use of some private ambulance services, but not through large tenders. In December 2013, a three-year contract was awarded to the company Buthelezi EMS to provide an inter-facility transfer service in the province. One competitor company claimed they had never seen the tender advertisement. The Free State Department of Health declined to provide Spotlight with information as to where the tender was advertised. We have not been able to find any evidence that it was ever advertised. By all accounts Buthelezi EMS was a very small company at the time and did not have the capacity to service the entire Free State province. They were also not based in the province but in Gauteng.

The Director of Buthelezi EMS is Mr Thapelo Buthelezi. Companies and International Properties Commission (CIPC) records indicate that Mr Buthelezi has registered a number of companies with similar names. These include: Buthelezi EMS CC, Buthelezi EMS (PTY) LTD, B EMS CC, Buthelezi HEMS CC, Buthelezi Helicopter EMS (PTY) LTD, and Buthelezi One Stop

---

<sup>2</sup> Schoon, Marthinus Gerhardus. "Impact of inter-facility transport on maternal mortality in the Free State Province." *South African Medical Journal* 103, no. 8 (2013): 534-537.

<http://www.samj.org.za/index.php/samj/article/view/6828/5286>

Emergency Medical Services CC. CIPC records indicate that many of these companies were in deregistration at various times due to tax non-compliance. In one instance, the name of the company appearing on an invoice provided to the North West Department of Health did not correspond to the CIPC registration number linked to that name. We suspect that an audit of all Buthelezi company contracts with the state and the related CIPC registrations and tax statuses at the time may shed some light on why Mr Buthelezi registered so many companies with similar names. We have been made aware of alleged South African Revenue Service (SARS) rulings against Mr Buthelezi – although SARS would not confirm this. CIPC records also reveal that some of his companies failed to file Annual Returns. This could impact on his ability to produce tax certificates, a key document when signing a tender contract.

In March 2016, Buthelezi EMS received the bulk of the North West's three-year, inter-facility transfer tender. A company called High Care EMS received the remainder. The directors of the two companies, Mr Thapelo Buthelezi and Mr Mogale Clifford Mahlo are also listed in CIPC records as co-directors of the companies Vosloorus Ambulance Services CC and VAS Emergency Medical Services. This seems to confirm information that High Care operated as a front company for Buthelezi. The North West tender process raises concerns for the following reasons:

- The tender specifications were allegedly changed after the award of the tender to allow for P1, P2 and P3 transfers – having initially only provided for P1 transfers. P1 is very serious, potentially life threatening; P2 means the patient needs to go to hospital, can become life threatening if not treated and P3 is minor injuries.
- The tender specifications were allegedly changed after the award of the tender to allow for transfer between hospitals, clinics and community healthcare centres. The initial specifications only provided for transfers between hospitals. This change vastly expanded the scope of the tender.
- While the tender required that the successful bidder have a presence (ambulance, response car, advanced life support paramedic) in each sub-district, Buthelezi EMS

were awarded the contract in districts where they did not have this capacity in sub-districts, according to a well-placed source in the Department.<sup>3</sup>

- Healthcare workers allege that the quality of service provided by Buthelezi EMS is often very poor. Spotlight first reported on this in July 2016<sup>4</sup> and again in April 2018.<sup>5</sup> Allegations include long waiting times, overcrowding in ambulances, rude and under-qualified staff, and ambulances that lack equipment and consumables.

Internal North West Department of Health documents suggest that Buthelezi EMS was grossly overcharging the department. Our understanding is that this over-charging was raised in departmental meetings, but that orders were given to pay the invoices irrespectively. This changed when the department was placed under administration. We understand that since the department was placed under administration there has been an audit of the invoices and reduced amounts were paid to the company.

While it appears that inflated invoices were submitted in the North West without much effort at justification, alleged overcharging in the Free State took another form. Well-placed sources allege that Buthelezi EMS inflated costs by (a) charging for longer distances than were actually travelled and (b) charging for five separate trips when five patients were transported in one ambulance.

Spotlight has viewed internal Free State government figures that indicated extreme overspending on the province's emergency medical services budget. The overspending listed below has negative impacts on other healthcare areas:

- In 2015/2016 the department spent R152 million on EMS, overspending their budget by R88 million;

---

<sup>3</sup> Thom, Anso and Marcus Low. "Health4Sale Part 2: NorthWest pays double for dubious private ambulance service." Spotlight NPS, April 19, 2018. <https://www.spotlightnsp.co.za/2018/04/19/northwest-pays-double-dubious-private-ambulance-service/>

<sup>4</sup> Ho, Ufrieda. "Buthelezi EMS remains a problem and a mystery." Spotlight NPS, July 18, 2016. <https://www.spotlightnsp.co.za/2016/07/18/buthelezi-ems-remains-problem-mystery/>

<sup>5</sup> Thom, Anso and Marcus Low. "Health4Sale Part 4: Buthelezi EMS running a taxi service, not an ambulance service – Doctors and nurses." Spotlight NPS, April 23, 2018. <https://www.spotlightnsp.co.za/2018/04/23/health4sale-part-4-buthelezi-ems-running-taxi-service-not-ambulance-service-doctors-nurses/>

- In 2016/2017 the department spent R163 million on EMS, overspending their budget by R86 million;
- By the time the figures were generated, the EMS expenditure for the 2017/2018 financial year up to that point was R161 million, already overspending the budget by R117 million.

At the time of the Buthelezi EMS contract in the North West, the head of the province's health department was Mr Thabo Lekalakala, who has since been suspended. Lekalakala was allegedly appointed as Head of Department without meeting the job requirements. The then Minister of Health Dr Aaron Motsoaledi is on record saying that Lekalakala should be charged. The appointment of Mr Lekalakala is suspicious and should be investigated. Sources within the provincial department of health allege that appointments were often made based purely on political considerations and not on qualifications or fitness for positions.

Over R100 million from the Comprehensive HIV and AIDS Conditional Grant were used by the North West Department of Health to pay for inter-facility transfer services provided by Buthelezi EMS and High Care EMS from 2016 to 2018. Use of funds from the HIV conditional grant for non-HIV-related services is unlawful. In May 2016, a letter from the office of the head of the provincial department of health instructed that R36 million from the HIV conditional grant should be used to pay the two companies. In April 2018, the National Department of Health told Spotlight that in the 2017/2018 financial year, R93 million in HIV conditional grant funds was set aside in the North West province for paying private providers for inter-facility transfers (the two contracted companies were Buthelezi EMS and High Care EMS). Apart from misuse at funds at a provincial level, this also indicates a lack of oversight from the National Department of Health, which has to approve HIV conditional grant business plans.<sup>6</sup>

---

<sup>6</sup> Thom, Anso and Marcus Low. "Health4Sale Part 1: North West blows HIV money on controversial private ambulance service." Spotlight NSP, April 18, 2018.  
<https://www.spotlightnsp.co.za/2018/04/18/health4sale-north-west-blows-hiv-money-controversial-private-ambulance-service/>

The Free State Department of Health was under provincial treasury administration for most of the period from 17 March 2014 to 15 February 2018. However, on 3 February 2017, then Free State Premier Ace Magashule signed a memorandum decreeing that the department would effectively be taken out of administration from 6 to 10 February 2017. During this five-day period a backdated increase for Buthelezi EMS was signed off. We understand that such backdated increases are highly unusual in government contracts.

**Aeromedical contracts with the joint venture Buthelezi HEMS in the Free State, North West, Mpumalanga and Limpopo and the role of National Treasury in these contracts.**

Aeromedical services can play an important part in the delivery of healthcare services. Aeromedical services can broadly be divided into two areas: (a) Attending to medical emergencies – typically by flying helicopters to the scene of an accident and transporting patients to hospitals and (b) outreach, where healthcare workers are flown by helicopter or aeroplane to provide a healthcare service in a remote area. Both types are often life-saving.

While the below narrative is complex and has many strands, a key element is the series of suspicious decisions which benefited a joint venture called Buthelezi HEMS. Buthelezi HEMS is a joint venture between Buthelezi EMS, the same company mentioned above, and a company called HALO Aviation.

HALO Aviation (HELICOPTER AND AIRPLANE LOGISTICAL OPERATIONS (PTY) Ltd) is a company providing primarily aeromedical services. Its directors are Ryan Horsman and Tebogo Sehona. Mark McConnell and James Siegrist were also directors in the period relating to the below.

Another key entity in this case is Red Cross Air Mercy Service (AMS). AMS is a non-profit that was founded in 1966.

RT-79 2015 was a 3-year transversal contract for aeromedical services administered by National Treasury. Provinces could opt to participate in the tender or not. Limpopo, KwaZulu-Natal, Mpumalanga participated. RT-79 2015 was suspended by National Treasury in May 2016 based on a technicality in the tender specifications relating to a utilisation factor that

was not disclosed. This cancellation was particularly puzzling given that various concerns with the tender specification brought to National Treasury's attention prior to the award of the tender were not addressed. The suspension of RT-79 became the subject of litigation between AMS and National Treasury. In November 2017 the Supreme Court of Appeal (SCA) found in favour of AMS and ordered that RT-79 should continue. All of this is explained in detail in court documents. As discussed below, the suspension of RT-79 created a vacuum that was soon filled by various questionable contracts. It cannot be ruled out that this vacuum may have been created intentionally.

The Free State Department of Health did not participate in RT-79 2015. Instead, it ran its own aeromedical tender awarded in 2015 to Buthelezi HEMS.

Following the cancellation of RT-79, the piggy-backing provision in the PFMA was used to give Buthelezi HEMS contracts in both Limpopo and Mpumalanga by piggy-backing on the Free State tender. The same provision was used to contract Buthelezi HEMS in the North West province – although the North West never participated in RT-79 to begin with.

AMS claims that they were not asked whether they could continue to provide the service in Mpumalanga and Limpopo – as one might have expected given that they were the service providers at the time RT-79 2015 was suspended. The two provinces could have asked them to continue on a month-to-month basis or to bid again. Instead, it seems no service providers other than Buthelezi HEMS were considered.

**The Mpumalanga Department of Health ignored advice from the Mpumalanga Treasury and allegedly contravened the PFMA:**

On 29 June 2016 Dr Savera Mohangi, Head of the Mpumalanga Department of Health, wrote to the province's treasury indicating that the department wished to piggy-back on a contract between the Free State Department of Health and Buthelezi HEMS rather than going through a tender process. In her motivation for proceeding with the contract for aeromedical services, Dr Mohangi claimed that critical patients could be transported by road "due to their conditions which would result in loss of life due to prolonged transportation times as well as

the non-suitability of the road transport.” She added that sourcing other service providers would take longer “as the services are required at such short notice.” She did not explain in her letter why the department opted against continuing with the existing AMS service on a month-to-month basis until the issues around RT-79 could be sorted out.

Dr Mohangi also did not wait for provincial treasury to give the green light before setting things in motion. On the same day as writing to treasury, Dr Mohangi also wrote to Dr David Motau, Head of the Free State Department of Health requesting to participate in their tender for aeromedical services. A week later on 4 July 2016, Dr Motau wrote a one paragraph letter to HALO Aviation and Buthelezi HEMS asking if they “[were] willing and in a position to render the same aero medical service in the Mpumalanga Province at the same terms and conditions as per current contract for the remaining period ending 30/09/2018.” HALO Director Ryan Horsman responded to Dr Motau in a one paragraph letter expressing their “willingness, capability and acceptance to render same service [sic] to Mpumalanga Department of Health.”

However, Nombedeso Nkamba, Head of the Mpumalanga Treasury, wrote back to Dr Mohangi on 6 July 2016 clearly stating that the PFMA only allowed for month-to-month contracts in such cases up to a maximum of six months. Her letter leaves no doubt that the proposed three year contract was not in line with the PFMA. This advice was ignored and Dr Mohangi went ahead with the awarding of a three-year contract to Buthelezi HEMS. In her letter to Thapelo Buthelezi, Director of Buthelezi EMS and HEMS, she stated, “It is with pleasure to inform you that HALO Aviation (Pty) Ltd & Buthelezi HEMS/Trading at Buthelezi EMS is the successful bidder to supply and deliver the undermentioned item(s) to the Department.” She requested that they assume their services on 11 July 2016. While Dr Mohangi refers to a “successful bidder,” it should be noted that there was no bid process for the Mpumalanga contract. Spotlight wrote about this in an article in 2018.<sup>7</sup>

---

<sup>7</sup> Low, Marcus and Anso Thom. “Health4Sale Part 3: Mpumalanga department of health broke rules for controversial ambulance company.” Spotlight NSP, April 20, 2018. <https://www.spotlightnsp.co.za/2018/04/20/mpumalanga-department-health-broke-rules-controversial-ambulance-company/>

## **Limpopo:**

Limpopo, like Mpumalanga, did not continue with the AMS service when RT-79 2015 was suspended but instead appointed Buthelezi HEMS in terms of the piggy-back provision.

After the SCA judgement of November 2017 ordering the reinstatement of AMS, the Limpopo Department of Health did not reinstate AMS.

In May 2018 the North Gauteng High Court ordered the Limpopo Department of Health to comply with the SCA order and to reinstate AMS.<sup>8</sup>

Taken as a whole, the two ground ambulance and four aeromedical contracts awarded to Buthelezi EMS/HEMS from 2013 to 2017 are riddled with irregularities and questionable decisions. While some aspects of this are the subject of Hawks, National Treasury, and Special Investigating Unit investigations and litigation, we are not aware of any investigative process attempting to connect all the dots as to how four provinces and National Treasury's actions over a period of time benefited one company at the expense of others and the quality of service delivery. Several attempts by Spotlight to obtain a substantive response from National Treasury on any of these matters have failed. Of the various investigations, we understand the SIU investigation to be the broadest – it covers the ground ambulance contracts with the Free State and North West and the aeromedical contract with the Free State. We do not know whether it covers the piggy-backing aeromedical contracts in Limpopo, Mpumalanga and the North West.

Spotlight has also received multiple accounts by whistle-blowers describing how the growth of Buthelezi EMS was enabled by specific persons in the Free State Department of Health. We are willing to facilitate confidential access to some of these allegations.

---

<sup>8</sup> Low, Marcus and Anso Thom. "Health4Sale: How the Limpopo Department of Health went rogue to protect Buthelezi HEMS." Spotlight NSP, May 18, 2018. <https://www.spotlightnsp.co.za/2018/05/18/health4sale-how-the-limpopo-department-of-health-went-rogue-to-protect-buthelezi-hems/>

## **A medical equipment contract with the company Mediquip Hub SA in the Free State**

The Free State Department of Health approved Mediquip SA Hub (Pty) Ltd as a supplier in line with a bid as part of DOH (FS) 45/15/16 for the supply, delivery, installation and commissioning of various medical equipment. Mediquip scored the bulk of a bid which also awarded parts of the contract to other companies.

A whistle-blower doctor made contact with Spotlight claiming that Mediquip was supplying sub-standard equipment which either broke soon after being installed or was so inferior that it could not be used. The tender in question was awarded in August 2016 to Mediquip SA Hub for a five year period.<sup>9</sup> The Free State Department of Health confirmed in 2018 they had already paid Mediquip over R100 million under this tender in the less than two year span that the tender had been running. The tender runs until 2021.<sup>10</sup>

An anaesthesia work station is supplied by Mediquip at a cost of R905 000 and an anaesthesia machine at R505 200 per unit. A government medical equipment procurement expert from another province said that some of the Mediquip equipment prices were low and that he would have been immediately concerned if he saw the prices. He said he would have been very nervous if these prices were quoted to him. Theatre tables for orthopaedics are supplied at about R433 000 per bed, about half of what a good quality bed in the state would cost, according to the procurement expert.

The Department has refused to provide Spotlight with copies of the specifications for the tenders awarded to Mediquip and also refused to share the service-level agreements between the Department and Mediquip. In both cases they said: “The Department can only provide you with the information required if procedure in terms of Access to Information Act is followed.”

---

<sup>9</sup> Low, Marcus and Anso Thom. “Health4Sale: Free State – Multi-million Rand contract delivers dodgy medical equipment.” Spotlight NSP, May 16, 2018.

<https://www.spotlightnsp.co.za/2018/05/16/health4sale-safety-concerns-at-free-state-hospitals/>

<sup>10</sup> Low, Marcus and Anso Thom. “Health4Sale: More dodgy equipment supplied to the Free State.” Spotlight NSP, October 19, 2018. <https://www.spotlightnsp.co.za/2018/10/19/health4sale-more-dodgy-equipment-supplied-to-the-free-state/>

Mediquip appears to be a relatively small company, employing only 10 people. Until recently they had no online presence, although their lawyer claimed that a “new website is under construction and will be operational in due course.” A rudimentary website has now been published. The Free State Department of Health also indicated that they have no plans to cancel the tender.

The two local directors of Mediquip are George Sebulela and Bernard Tefetso Phitsane. The other Mediquip directors listed in the CIPC database are Qinwei Ji, Lizhong Qiang and Feng Zhou. According to CIPC records, Phitsane became a director of Mediquip in March 2015, six months after he left the board of the Free State Development Corporation. While Mediquip was founded in 2012, all signs indicate that activity only started in 2015 when Phitsane and Sebulela joined the company. Phitsane is also listed as a director of Dinaka Trading 5 CC, a company of which Ace Magashule is a former director and his son Tshepiso Magashule is still listed as a director. Speaking through his lawyers, Phitsane denied ever having been in business with Ace Magashule, in apparent contradiction of CIPC records.

Phitsane was on the board of the Free State Development Corporation from July 2012 to October 2014. In the 2014/2015 Annual report of the FDC, Mediquip is listed as one of the FDC’s pipeline projects. The FDC describes Mediquip as a company that manufactures medical equipment, employs 200 people and has an estimated value of R500 million. As it turns out, Mediquip’s main business would not be manufacturing, but importation of medical equipment from China.

Phitsane is married to Nelisiwe Phitsane who is the Chief Director of Supply Chain Management and Asset Management in the Free State Department of Health. According to Mr Phitsane this relationship was disclosed when bids were submitted to the Free State Department of Health. The department confirmed this to Spotlight. Phitsane on several occasions promised to share the disclosure form which had to be submitted as part of the tender application, but failed to do so. Free State Health Department spokesperson Mondli Mvambi said any queries would have to “follow procedures in terms of access to Information Act.”

In April 2016, a few months before being awarded the medical equipment tender, the Free State tender bulletin announced Mediquip was awarded their first major tender in the province. This tender was for the provision of mobile medical units (a kind of mobile clinic), or “China buses” as they are commonly referred to in the province. The Department indicates that they paid Mediquip just over R70 million under this tender for six of these mobile medical units (thus adding up to close to R12 million per unit). While the announcement was made in April 2016, this tender was in fact already awarded in October 2015. In all other cases where Spotlight looked at the award of tenders, the award was announced the next month and not six months later. The Free State Department of Health failed to respond to a question on why the announcement was delayed. The October 2015 date is also only half-a-year after Phitsane and Sebulela became directors of Mediquip.

Mobile medical units in the Free State and North West have made headlines in recent years following exposés about contracts being awarded to the Gupta-linked company Mediosa (also trading as Cureva and Dinovert). Mediosa was awarded their Free State mobile medical unit tender in April 2016. When asked to explain the different roles of Mediosa and Mediquip, the Free State Department of Health explained: “Mediquip SA Hub (Pty) Ltd is contracted for the supply and delivery of the Medical Mobile Units (outright purchase) while Mediosa is contracted for the provision of the primary healthcare services using a Mobile Medical Unit.” Mediquip denies having any link to Mediosa.

Whistle-blowers reported that newly purchased theatre beds were breaking in Free State hospitals within months of installation, making it hard to perform critical surgery. They said the department had bought entry-level equipment from China through Mediquip. The mechanism that was supposed to get the tables to move up and down and tilt broke within weeks.

At one hospital, a height-adjustable orthopaedic theatre bed got stuck on a too high setting, forcing doctors to stand on benches while operating. In other cases, newly installed theatre lights were too low, resulting in some of the theatre personnel often knocking their heads while performing surgery. Doctor said the beds were standing in the passage and were used only a few times before they literally buckled. The department eventually sent additional beds

to replace some of the broken beds, but these had exactly the same mechanism. It was reported that the broken beds were dumped in the hospital passages and storerooms and replaced by the same Chinese brands after six months.

Anaesthetists also refused to use new anaesthesia machines as the equipment was viewed as sub-standard. The newly purchased anaesthesia machines gathered dust because anaesthetists were not willing to use the machines as they were missing components and various alarms did not work. Anaesthesia machines typically have multiple components and a sophisticated set of alarms to ensure that nothing goes wrong while a patient is under anaesthesia. While allegations were that the anaesthesia machines remained unsafe to use, Mediquip said in response that this was not the case and that their machines were certified by internationally recognised accreditation authorities. "As regards the missing components, No components are missing, as all equipment is delivered fully functional and operational, there are additional components requested by the institutions and supplied accordingly from time to time," they said through their lawyers. However, whistle-blowers confirmed many months later that the machines were still standing idle.

The Free State Department of Health acknowledged these concerns in media reports, saying "The department is aware of the complaints relating to theatre beds and anaesthesia machine(s), the company is currently attending to the complaint to ensure compliance with the specifications."

Mediquip SA Hub responded to media questions through their lawyers: "I am unaware as to what standard has been employed by these doctors in the assessment that you mentioned. Our products are under warranty and any defective products are replaced at no cost."

In 2018, Mediquip also sent five mobile x-ray units to Pelonomi Hospital, but these had to be returned after a key part of the machines was too short, making it unusable and increasing the risk of radiation exposure for patients. Over and above the short columns, staff in the radiology department also discovered that the mobile X-ray machines, procured by the province at over R2,5 million each, had not been registered with a radiation control body and that Mediquip could not supply a compliance certificate.

We understand that the x-ray tube which is mounted on the unit column has to be a safe distance of no less than 120 centimetres from the patient for a supine/flat chest x-ray on an immobile patient. The patient is x-rayed either flat or sitting up in the bed. If the bed is fixed at a certain height then it is impossible to reach the required minimum distance. This means that if the column is too short, then the x-ray tube, which rotates around the column, will be too close to the patient. This problem leads to the contravention of a number of radiation standards such as over exposure of the patient to radiation and inadequate field of view for the radiologist. Each hospital or province should have a radiation inspection or control board that deals with compliance. This board would have to register the equipment and conduct periodic radiation inspections in each centre where x-rays are provided.

As a result of these equipment challenges, Free State hospitals were unable to attend to a long-waiting list in its orthopaedic department. Doctors reported that sub-standard equipment resulted in operations being delayed, thus making waiting lists longer. Sub-standard equipment undoubtedly harms staff morale and retention.

### **Unlawful clinical trial and contract with the company ReGenesis in the Free State.**

In October 2016 the Free State Department of Health was set to spend tens of millions of Rands on unproven and potentially dangerous stem cell therapies for the treatment of musculoskeletal diseases in its orthopaedic knee patients at two hospitals. The treatment was run by a private company called ReGenesis Biotechnologies and was started on 1 June 2016.

A whistle-blower sent SECTION27 the service level contract between the Free State Department of Health and ReGenesis Biotechnologies (Dr Wian Stander) which indicated that the service would be provided in Pelonomi hospital in Bloemfontein and Boitumelo hospital in Kroonstad. The department would pay R30 000 per client, with a guaranteed supply of one thousand patients per year. This adds up to R30-million per year and R90-million over the three years of the contract.

In the same week in which they were alerted, the then Medicines Control Council (MCC) (now the South African Health Products Regulatory Authority) spended the unlawful stem cell

experimentation at Pelonomi (a state hospital in Bloemfontein) being conducted under the leadership of Dr Wian Stander. MCC Chairperson Professor Helen Rees confirmed that inspectors had been to the Pelonomi site. “Our concern was that the service level agreement made reference to medicines, injections and therapeutic research,” Rees told Spotlight.

She said the informed consent documents referred to the patients giving permission for stem cell therapy, permission for stem cells to be removed, concentrated and re-injected and for their stem cells to be given to another person.” She raised the following concerns:

- “This is not a proven therapy and we were concerned about the reference to research as well as the fact that stem cells will be given to other persons. This led to questions whether this was in fact a clinical trial and if it was, the MCC has not given permission for it to be conducted,” Medical research that has not been approved by the regulator is unlawful in South Africa.
- “We have asked Dr Stander to stop enrolling patients and now await a response to the information we have requested from him,” Rees said, adding that, “injecting anything into a patient comes with risk as you always run the risk of introducing infection.”

After Spotlight indicated it would be going public, the Free State Department of Health, cancelled its contract with ReGenesis Biotechnologies and Dr Stander. HOD Dr David Motau announced the cancellation shortly after a set of questions were sent by the media alluding to the involvement of the Health MEC Dr Benny Malakoane.

Spotlight sent the then MEC’s office a number of questions and delayed going to print at the time as Malakoane’s spokesperson Mondli Mvambi requested that he be given time to investigate. Mvambi later sent an email stating the following: “Our response to all your questions is that after careful consideration, the Free State Department of Health has decided to cancel the ReGenesis Biotechnologies contract with immediate effect. We will not comment any further on this contract as it is now sub judice.” Mvambi would not explain at the time why the case was now sub judice.

There are a number of important details of the contract to note:

- The contract states that ReGenesis “shall provide the department with the clinical governance and treatment protocols at the onset of the service on 1 June 2016.”
- The contract also states that the Free State Department of Health and ReGenesis would establish a project management committee consisting of the MEC of Health as Chairperson as well as the CEOs of Pelonomi and Boitumelo hospitals, COOs and representatives from ReGenesis. It reveals that the committee shall meet monthly for the duration of the Agreement to “track progress, resolve pertinent matters to the effective and seamless treatment of patients”.
- The contract states that this agreement would run until 30 June 2019 with the department in essence guaranteeing 1 000 patients per annum, paying ReGenesis R30 000 for each treatment. There is provision in the contract for ReGenesis to motivate for treatment in excess R30 000. The contract also stipulates an upfront payment of a percentage of the cost of the three year contract, which also makes provision for a price increase after the first year. The Department also undertakes in the contract to supply ReGenesis with all consumables required.

### **Stem cell therapy for knee problems:**

Substantial research is being done around the world into various stem cell therapies including for the treatment of arthritis and osteoarthritis of the knee. A search of the literature however shows no evidence from phase III trials indicating that any form of stem cell therapy is safe and effective for the treatment of knee problems. With few exceptions, medical treatments are only approved for use in humans once compelling evidence is available from phase III trials.

In the case of stem cell therapies caution is particularly important given some reported cases of tumour formation associated with such treatments. In a recent letter in the *New England Journal of Medicine*<sup>11</sup> doctors warn against the risks associated with unproven stem cell treatments. Outlining a specific case, they write: “This case and others in which tumours

---

<sup>11</sup> Berkowitz, Aaron L., Michael B. Miller, Saad A. Mir, Daniel Cagney, Vamsidhar Chavakula, Indira Guleria, Ayal Aizer, Keith L. Ligon, and John H. Chi. "Glioproliferative lesion of the spinal cord as a complication of “stem-cell tourism”." *New England Journal of Medicine* 375, no. 2 (2016): 196-198.  
<https://www.nejm.org/doi/full/10.1056/NEJMc1600188#t=article>

have developed in the context of stem-cell tourism (a trend in which patients travel for the purpose of obtaining therapy) illustrate an extremely serious complication of introducing proliferating stem cells into patients.”

The United States Food and Drug Administration has warned consumers<sup>12</sup> against using unregistered stem cell therapies. They have also sent warning letters<sup>13</sup> to companies providing certain kinds of stem cell therapies and in 2012 won a court case against the company Regenerative Sciences in which the court affirmed the FDA’s authority to regulate stem cell therapies that make use of a patient’s own cells.<sup>14</sup>

Spotlight has published various reports on the shocking state of orthopaedic services in the Free State.<sup>15</sup> Yet, the province was prepared to spend millions on an untested, unlawful intervention in the context of a shortage of money for basic orthopaedic services. This is deeply problematic.

### **Various other contracts and cases of concern in various provinces.**

In addition to the above cases, we also wish to draw the commission’s attention to a number of other cases of alleged corruption. We mention these cases more briefly, since we either have less direct information about these cases, or other entities have investigated these cases in more detail than we have.

### **Systemic issues identified in our work**

---

<sup>12</sup> Food and Drug Administration. “FDA Warns About Stem Cell Therapies.” FDA.gov. November 16, 2017. <https://www.fda.gov/consumers/consumer-updates/fda-warns-about-stem-cell-therapies>

<sup>13</sup> Food and Drug Administration. “Warning Letter: Irvine Stem Cell Treatment Center.” FDA.gov. December 30, 2015. <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/irvine-stem-cell-treatment-center-12302015>

<sup>14</sup> Cyranoski, David. “FDA’s claims over stem cells upheld.” *Nature*. July 27, 2012. <https://www.nature.com/news/fda-s-claims-over-stem-cells-upheld-1.11082>

<sup>15</sup> Thom, Anso. “Return of the quacks.” Spotlight NSP, December 6, 2016. <https://www.spotlightnsp.co.za/2016/12/06/return-of-the-quacks/> ;

Ho, Ufrieda. “#Vote4Health: Still no end in sight to orthopaedic disaster in Free State.” Spotlight NSP, March 25, 2019. <https://www.spotlightnsp.co.za/2019/03/25/vote4health-still-no-end-in-sight-to-orthopaedic-disaster-in-free-state/>

We thought it would be useful to provide a list of some of the systemic issues we have come across in our work relating to corruption. While our observations are based mainly on our experience in a few provinces, we suspect these concerns are relevant to most provincial departments of health to a greater or lesser degree.

- Some whistle-blowers in provincial government feel they have no safe means to blow the whistle within government. They believe that what official channels exist have been compromised. They also have little faith in the Hawks at provincial level. Those who spoke to Spotlight mostly did so in desperation and as a last resort.
- Some whistle-blowers who resist corruption report intimidation. Others report being suspended or moved from their posts without reason.
- The real or perceived lack of accountability for corruption have been very demoralising for principled persons in provincial health departments who try to act within the law and in the public interest.
- In some cases deeply irrational appointments are made in provincial departments. We suspect that existing mechanisms to ensure that only appropriately qualified persons are appointed are insufficient.
- The lines between the role of the MEC for Health and the role of the Head of Department are often blurred. The over-reach of Premier's or MECs into the day-to-day running of provincial healthcare systems and the making of key appointments in provincial departments of health is a major vulnerability in our provincial healthcare systems.
- Provincial Treasuries are supposed to provide oversight over spending by Provincial Departments of Health. In some cases there appears to be no oversight provided, in other cases Treasury advice is simply ignored by health departments.
- There seems to be no accountability for poor financial management and poor compliance with the PFMA.
- It appears that in at least some cases, loopholes in the PFMA are being exploited to facilitate corruption.

- Poor tender specifications often lead to adverse outcomes for the public. If an equipment tender does not require equipment of a certain standard, sub-standard equipment may be purchased. Poor tender specifications can be the result of incompetence or of deliberate efforts to rig a tender. In the latter case tenders can be written to suit certain service providers.
- Some health tenders are highly technical. Not all provinces have the capacity to develop appropriate tender specifications. In such cases transversal contracts theoretically provide a solution. The problem is that provinces can opt not to take part in transversal contracts and sometimes opt to do so for the wrong reasons.
- Provincial Departments of Health often reject media requests for tender or spending-related information stating that in order to access the requested information applications must be made in terms of the Protection of Access to Information Act (PAIA). This runs counter to the Constitutional values of transparent and accountable governance and is the opposite of what is intended with PAIA. It would be useful if provincial departments are given clear guidelines on what information should be provided to the media and the public on request without recourse to PAIA.

We thank you for the opportunity to make this submission.

**CONTACT DETAILS**

Sasha Stevenson

SECTION27

[stevenson@section27.org.za](mailto:stevenson@section27.org.za)

Anele Yawa

Treatment Action Campaign

[Anele.yawa@mail.tac.org.za](mailto:Anele.yawa@mail.tac.org.za)