

Will medical negligence cases spike post Covid-19?

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South African courts already see a large number of medical malpractice/negligence cases every day. Now, as a result of the Covid-19 pandemic, our already stretched health system is at capacity, placing extreme pressure on medical personnel, which in turn puts them and the healthcare system at risk of several dangers. Due to this added pressure and strain, it is likely that there will be a rise in medical malpractice/negligence cases being brought forward.



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Whilst some of these cases will be directly linked to Covid-19 (merits-wise), others will be indirectly linked to the pandemic, specifically, as the healthcare system's focus shifted to dealing with corona infections, those patients with non-Covid-19-related illnesses may have been neglected or received substandard medical attention. Consequently, this may have exacerbated ill-health or even resulted in death. These circumstances will almost inevitably bring about an exponential growth to the already long list of medical malpractice/negligence cases.

Since the beginning of the pandemic, there have been differing opinions and speculations as to how the courts are likely to approach these medical malpractice/negligence cases, given the unfamiliar strenuous situations under which the medical experts and personnel have been operating. Some believe that a considerate approach will need to be adopted, whereas others argue for a stern approach that requires the courts to apply the well-established legal principles in an ordinary manner. Obviously, the adopted approach will not be universal and applied across all local jurisdictions – but the patterns and precedents created through these cases will be telling of which approach has gained support in our courts.

The court's approach

The approach our courts choose to adopt is very pertinent, as this will be an indication of whether there will be a spike in medical malpractice/negligence cases. A conservative approach will demotivate such cases, while a liberal approach will serve as a stimulant. Further, the more cases of medical malpractice/negligence there are, the harder the budget of the relevant department of government (for public hospitals) will be hit. Medical malpractice/negligence cases are generally high in quantum, namely, high monetary compensation for the victims – as a result of which the state has, on various occasions, tried to restructure payment methods in order to deal with such massive amounts. A considerate approach will be favourable to the state, as only a few cases will succeed. However, a stern approach will most likely have devastating financial ramifications for the government's health budget.

A general feeling is that the courts will be considerate when dealing with directly linked Covid-19 cases. That said, cases of gross negligence will probably be unpardonable. An increased likelihood that non-Covid-19 patients have been receiving substandard medical attention during this period will fuel more medical malpractice/negligence cases, and, in those instances, the courts will most likely apply the legal principles of medical malpractice/negligence in a usual manner.

Therefore, a spike in medical malpractice/negligence cases is probable and, as such, billions of rand may need to be injected to the health department to cater for it.

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