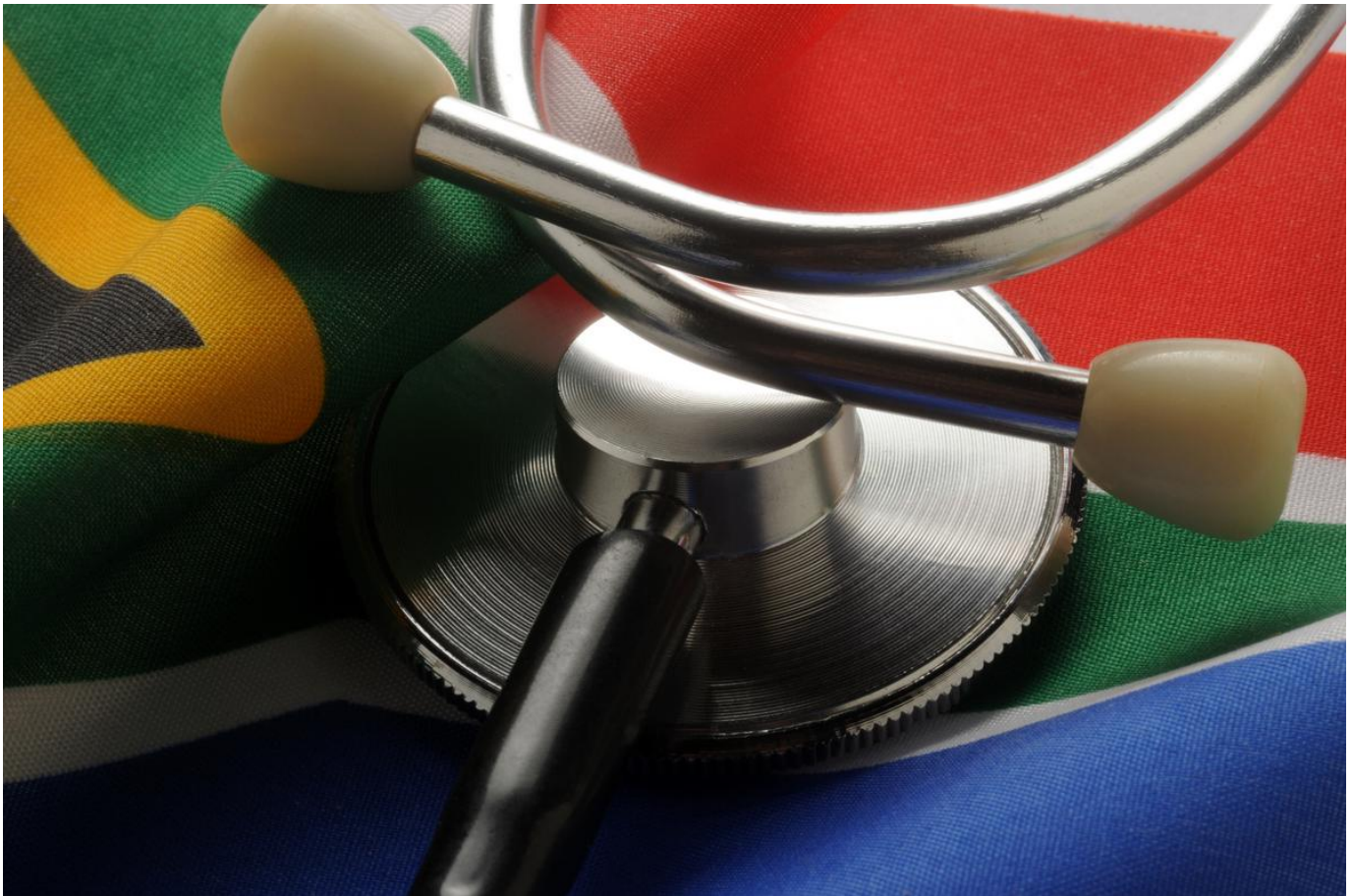


Certificate of Need: DoH to fight 'unconstitutional' ruling in High Court today

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The June ruling by the High Court in Pretoria that declared the Certificate of Need (CoN) unconstitutional and invalid will be contested in the same court today (14 November) when Health Minister, Dr Joe Phaahla, and Deputy-Director General of Health, Dr Nicholas Crisp apply that the judgement be rescinded. According to the South African Private Practitioners Forum (SAPPF), the Department of Health has also applied to the Constitutional Court to stay its proceedings to scrap Sections 36 and 40 of the National Health Act that makes provision for the implementation of the CoN.

The application by Solidarity, supported by SAPPF, AISAPA and individual doctors, to have the CoN declared null and void was initially not contested by the Health Department. In its ruling on 23 June, Acting Judge Thembi Bokako criticised the Health Department and President Cyril Ramaphosa for

not responding to Solidarity's application at all or even telling the court that they were not going to oppose it.

Delivering her judgement Judge Bokako said the CoN permitted the National Health Director General to view healthcare personnel as "inanimate pawns in pursuit of the state's objectives," - which constituted a violation of section 10 of the Constitution.

The ruling was widely welcomed by healthcare practitioners, but they were warned that the CoN can only be scrapped after it was ratified by the Constitutional Court.

The Constitutional Court has meanwhile requested written submissions on whether it is competent for the High Court to rescind its order; and whether it is in the interest of justice to stay the confirmation proceedings.

Solidarity has submitted that both applications should be dismissed.

In his reaction to the June High Court ruling, SAPPF CEO, Dr Simon Strachan made it clear that while there was no denial that more healthcare providers are needed in rural and underresourced areas, the CoN was not the vehicle to achieve it.

Past chairperson of SAMA and now a board member of the Solidarity Doctors Network Advisory Board, Dr Angelique Coetzee then said the blind pursuance of shoddily drafted legislation showed a huge lack of insight and proved that government did not listen to doctors.

In supporting documents to Solidarity's application last year, the SAPPF said it believed that the CoN as contained in sections 36 – 40 of the National Health Act is potentially divisive.

“This regulation will exacerbate the divide that exists between the public and private sector and will hinder the path towards the progressive realisation of access to equitable health care for all South Africans. The criteria for the regulations are vague and the regulations place powers in the hands of the Minister of Health to summarily limit a person or institution’s choice of where to practice and the ability to practice their profession to the best of their ability. It violates the free market principles of supply and demand and restricts the freedom of economic activity that is entrenched in the constitution,” the SAPPF added.

The CoN provisions were initially drafted in 2003 by then National Department of Health Deputy Director General of Service Delivery Dr Kamy Chetty. They were quickly iced when protest erupted, and SAMA threatened to take the government to the Constitutional Court to counter the threat to the movement and trade of its 17 000 doctor-members.

Nothing happened until March 2014 when then president, Jacob Zuma issued a proclamation that the CoN would come into operation in the next month. This led to a huge outcry and the Dental Association pointing out that no enabling regulations have been published. Government then had to apply to the Constitutional Court to have the proclamation set aside, saying it was issued on wrong advice. Another seven years passed before the draft regulations were published in June last year for comment, leading to Solidarity’s application to have the CoN declared invalid and unconstitutional.