REMARKS BY EASTERN CAPE MEC FOR HEALTH, N. METH AT THE MEDICO-LEGAL SEMINAR ON 11 OCTOBER 2023

Programme director

SA Council of Churches Prof Canon Ntshingwa

Pastor Mqamelo, also of the SACC

OR Tambo District Community Services representatives, abamele uSodolophu

OR Tambo District Municipality Chief Whip, Hon. Cllr Ngqongwa

King Sabata Dalindyebo Local Municipality Chief Whip, Hon. Cllr Mlanjeni

ECDoH management as led by acting HoD, Ms Gede

CEOs of our hospitals

OR Tambo Traditional Health Practitioners as led by chairperson, gogo uJezile (uMamgcina)

Chairperson of NMAH Board- Mr Wakaba, uNondzaba

Leaders of our trade unions

Social partners

SAYC representatives: Mr Togu and Mr. Cwele

Doctors, nurses and lawyers among us

Team Health

Invited guests

Ladies and gentlemen

Allow me to say all protocol observed in case I miss someone I should acknowledge

I wish I could have been physically there with you, discussing this important matter which has drained government coffers for years – but due to conflicting schedules I cannot be there.

I have to attend to a Social Transformation Cabinet Committee, be at the Legislature before travelling to Johannesburg for tomorrow's National Health Council meeting.

But thanks to technology, I have been enabled to join virtually. This is one of the good things about COVID-19 because, now we are able to connect digitally and ensure that nothing stops just because we are not in the same room.

This also saves government a lot of money as we don't have to spend on accommodation for events, which assists us with the austerity measures in place. We must also save as much as we can so that we can honour our commitment of delivering quality services to the people of the Eastern Cape.

We are having this important seminar just a few weeks after we had the midwifery seminar in East London – which – in part also emphasised the importance of addressing medico-legal cases through improved services for mother and baby. The input by specialists in the field e.g. Prof Velaphi, Dr Harper from Frere (Paediatrics), Dr Singata and other healthcare professionals, who converged for the three (3) days, empowered our teams on clinical risk.

Programme director, all of us here today are aware that medico-legal claims have been an albatross around the neck of the department, and by extension, the provincial government.

The state has forked out billions of rands in litigation cases over the years. Because of the historic lump sum payments – whereby we were paying **R15-million** and **R30-million** to one person, seriously compromising our ability to offer uninterrupted services to our people.

This is why the department went to court, arguing a public defence case and asked the court not to compel the department to make lump sums in medical negligence cases, but rather offer care.

As you must be aware, Judge Griffiths agreed with the department and ordered that we offer future care to victims of cerebral palsy.

We must say that we sympathise with the mother of the child and the child who was a victim of negligence while in our care at Cecilia Makiwane Hospital. However, we are happy with the landmark judgement that has set case law.

The family is appealing against that February judgment so we cannot delve deep into that particular case because it is subjudice.

We must say that when we are negligent, we must pay, but in some cases, you find that the child was not even born at our facilities and in some the child is non-existent. In other cases, we've noted, the copy and paste by lawyers from their successful cases into new cases, leveraging on our weaknesses as a department in record management.

In such cases, a few rotten apples of our staff colluded with unscrupulous lawyers and stole files for them.

This coupled with our internal deficiencies of not having skilled legal personnel in the department, left us defenceless in court, ending up paying for cases landing us with default judgements. We've also noted that the same cases we paid lump sums for, the patients are back in our system for services already compensated for.

The wheels of justice turn slowly, but they turn, which is why we are confident that all those that are responsible for targeting the department – whether they are our employees, former employees or lawyers – the law will catch up with them.

Ityala aliboli.

We are happy that the Legal Practice Council has, after years, finally acted against Zuko Nonxuba who recently lost his appeal to be allowed to practise as an attorney. We are waiting with bated breath the final decision on this matter.

We are also watching with keen interest the criminal case that he is facing and hope that it will be given the urgency it deserves, so that his innocence or guilt can be proven.

Ladies and gentlemen, we have made strides in curbing the haemorrhaging of funds due to medico legal litigations.

Strengthening of Primary Health Care has been identified as one of our key success factors, as our analysis has indicated some challenges around that area. When the 6th administration assumed office, one of the areas we identified as needing urgent attention, was medico-legal litigations.

It is on this basis that the EXCO took a decision, that health must be supported to deal with this challenge. As a result of the EXCO decision, the Specialised Litigation Unit was established in OTP, comprising of OTP, the Provincial Treasury and SLU to re-inforce the ECDOH in dealing with medico litigations.

The SLU and the ECDOH established an integrated strategy, with emphasis on the prevention of future medical negligence claims, through clinical interventions as a priority intervention, while the remaining ones are supportive in nature and strengthen the legal tactical defence and administration of existing claims.

In 2021/22 we managed to reduce the annual medico legal payments from the projected annual payment of **R1-billion** to **R44-million**.

In June 2022, the High Court lifted the staying of writs of execution and argued that it was an interim order on the stay-of-writs in execution of the **fifty-one (51)** cases amounting to more than **R360-million** which the department lost through default judgments from 2017/18, 2019/20 , 2020/2021 FY.

I had a view that, we should appeal the judgment at the Constitutional Court, however, the legal teams and the Cabinet had a different view not to appeal citing that there were no prospects of winning the case.

On arrival of the SIU, after the proclamation by the President, for the SIU to assist the ECDoH on medico-legal claims, I instructed HOD Dr Wagner, to hand-over these **fifty-one (51)** cases to the SIU.

When I got to the department in March 2021, I was shocked to learn that we had a serious challenge of capacity. This contributed to our ability to defend even the simplest of cases. In fact, we were simply sitting back and relying on the OTP to defend us.

However, we have made great strides in improving our legal services capacity. We recently appointed **two (2)** directors that will specifically deal with medico-legal claims. The department has also established **four (4)** regional hubs that will assist our highly litigated hospitals.

These will be managed by senior legal practitioners as we work to turn the corner. No longer will we lose cases because we did not defend ourselves in court.

We also approved posts additional to staff establishment which are 11 e-liability and audit clerks, 5 PAIA coordinators and 2 admin officers.

We are also exploring a pro-litigation approach where cases will be reviewed at both PAIA and letter of demand stages for dispute resolution, e.g mediation, redress**.**

Ladies and gentlemen, we are also improving our clinical services. Clinical advisory teams consisting of internal specialist teams both in the eastern and western regions which are hard hit by medico-legal litigations, were established and are assisted by **ten (10)** retired nurses. They are specialists in midwifery, orthopaedics and ICU.

Nurses review the cases/summons in preparation for defence and also collect additional information and feedback from affected facilities, etc.

These are some of our efforts as we work around the clock to ensure that we address medico-legal cases.

The provision of comprehensive care for children with cerebral palsy remains a priority intervention of the department, and forms part of the medico-legal mitigation strategy. The department established centres of excellence in certain hospitals in order to deal with cerebral palsy cases.

The partnership with Norton Rose has played a huge role in lessening the number of claims as well as the amount the department would have paid in claims.

Medical litigation calls for a need to focus on prevention and reducing medico-legal risk. We can only do that if we work together and continuously improve competency among health professionals.

At the forefront is Continued Professional Development (CPDs) on partograph (labour graph) for monitoring the progress of labour, interpretation of feto-maternal vital signs. This forms an integral part of the nursing documentation, which is mostly found wanting when defending cases in court.

As part of infrastructure support to facilities, the department procured CTG machines for our maternity units. Our newly handed over state-of-the- art hospitals and CHCs, are equipped with the most sophisticated equipment as part of the prevention strategy.

The province must ensure that resources necessary for recording care rendered are available (e.g. the neonatal book).

Programme director, we must state that medico-legal cases are not unique to the Eastern Cape nor the public sector, but are a global phenomenon that needs to be addressed.

Our HMS2 innovation will also bear fruit as time goes on as the theft of files will seize. Patients' information will be electronically stored, and no files will end up with lawyers hell-bent on making a quick buck.

We want to close the tap like the Road Accident Fund did, for us to only pay in cases that we are responsible for, instead of every case even if the department is not to blame.

Our baby friendly hospitals are an enhancement of our efforts to deal with children who tend to suffer from cerebral palsy. Our Ward Based Health Outreach Teams, led by DCST's continue to be another tentacle to curb matters related to cerebral palsy.

Over and above the areas of good performance that I have briefly touched on, it is our hope that through this multi-sectoral collaboration, we will come up with more practical approaches in managing litigation.

Noting that this challenge is not an ECDOH's only, but all that are here and this seminar seeks to refocus our strategy and ensure all social determinants of health and critical interventions. The case of delays with ambulance responses to the most rural health centres or communities is another story that needs multi-departmental and multi sectoral approach, as the condition of our roads do not assist the department in providing the much-needed services by our people.

In **conclusion**, I implore the department to move with speed when there are vacancies and fill them before they are eaten by this cruel monster called the baseline.
If we are really serious about addressing medico-legal cases, we must ensure that we have adequate staffing for safe patient care, particularly for clinical services so that people will not have to work too much overtime, be stale and burnout.

We want to also make a clarion call for nurses to stop moonlighting as they will be overworked and be prone to making mistakes. Let us work together so that we can all achieve great health outcomes instead of being a department that bleeds millions of rands in medical litigation.

I thank you.