

PROCLAMATION NO. R. 34 OF 2019

**by the
PRESIDENT of the REPUBLIC of SOUTH AFRICA**

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as “the Act”), have been made in respect of the affairs of the Free State Provincial Department of Health (hereinafter referred to as “the Department”);

AND WHEREAS the State or the Department may have suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule, in respect of the Department, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by employees of the Department;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates

to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Department; or

(g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 January 2010 and the date of publication of this Proclamation or which took place prior to 1 January 2010 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the State or Department, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg this 7th day of June Two thousand and nineteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

TM Masutha
Minister of the Cabinet

SCHEDULE

1. The failure by the Department to—
 - (a) establish and maintain effective and efficient systems of financial and risk management and internal controls or to adhere strictly to the provisions of any such systems in respect of—
 - (i) the processing of overtime claims submitted by medical practitioners in the employment of the Department and payments that were made in respect thereof; or
 - (ii) payments that were made to medical practitioners in the employment of the Department for services that were rendered;
 - (b) verify overtime services that were actually rendered before making payments in respect thereof;
 - (c) take effective and appropriate steps to recover financial losses resulting from criminal or irregular conduct;
 - (d) take effective and appropriate disciplinary steps against any employee in its service, who committed an act that undermined the financial management and internal control systems of the Department;
 - (e) act upon conclusions or findings of audit reports and investigations conducted by the Department that identified—
 - (i) irregular overtime claims by medical practitioners in the employment of the Department and payments that were made in respect thereof;
 - (ii) that employees of the Department held business interests in service providers that conducted business with the Department or other organs of State; and
 - (iii) that employees of the Department conducted remunerative work outside the scope of their employment without the permission of the executive authority of the Department; and
 - (f) verify the qualifications, experience and competencies of foreign medical practitioners before such practitioners are employed by the Department to practise as medical practitioners in the Republic of South Africa.
2. The failure by medical practitioners employed by the Department to disclose to the Department that they were engaged in business activities for

remuneration outside the scope of their employment under the Public Service Act, 1994 (Proclamation No. 103 of 1994), or any contractual relationship with the Department or their failure to cease such unauthorised activity upon becoming employed by the Department.

3. Any undisclosed or unauthorised interest that medical practitioners in the employment of the Department may have had with regard to contractors, suppliers or service providers who put in bids for work or did business with the Department.
4. Claims that were submitted to medical aids and payments that were made in respect thereof for services that were rendered by medical practitioners who performed the services in question in terms of a contractual relationship with the Department.
5. Any unlawful or irregular conduct by employees of the Department or any other person or entity in relation to the allegations set out in paragraphs 1 to 4 of this Schedule.

PROKLAMASIE NO. R. 34 VAN 2019**van die****PRESIDENT van die REPUBLIEK van SUID-AFRIKA****WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996
(WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA
BESTAANDE SPESIALE ONDERSOEKEENHEID**

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleentheid van die Vrystaatse Provinsiale Departement van Gesondheid (hierna na verwys as die "Departement");

EN AANGESIEN die Staat of die Departement verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleentheid in die Bylae vermeld ten opsigte van die Departement, vir ondersoek na die Spesiale Ondersoekeenhede ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleentheid, dit die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleentheid van die Departement;
- (b) onbehoorlike of onregmatige optrede deur werknemers van die Departement;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op

voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe in verband met die sake van die Departement gepleeg is; of

- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 1 Januarie 2010 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2010 of na die datum van publikasie van hierdie Proklamasie, maar wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekkeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die Staat of die Departement gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 7 dag van Junie Tweeduisend–en-negentien.

CM Ramaphosa

President

Op las van die President-in-Kabinet:

TM Masutha

Minister van die Kabinet

BYLAE

1. Die versuim van die Departement om—
 - (a) effektiewe en voldoende stelsels van finansiële- en risikobestuur en interne kontrole in te stel en te onderhou of aan die bepalings van sodanige stelsels noukeurig na te kom, ten opsigte van—
 - (i) die prosessering van oortydse wat ingedien is deur mediese praktisyns in diens van die Departement en betalings wat ten opsigte daarvan gemaak is; of
 - (ii) betalings wat aan mediese praktisyns in diens van die Departement vir dienste gelewer, gemaak is;
 - (b) oortyddienste wat werklik gelewer is te verifieer voordat betalings ten opsigte daarvan gemaak word;
 - (c) effektiewe en voldoende stappe te neem ten einde finansiële verliese wat uit kriminele of onreëlmatige optrede voortspruit, te verhaal;
 - (d) effektiewe en voldoende dissiplinêre stappe te neem teen enige werknemer in sy diens wat 'n handeling verrig het wat die stelsels van finansiële bestuur en interne kontrole van die Departement ondermyn het;
 - (e) stappe te neem op grond van gevolgtrekkings of bevindings van auditverslae en ondersoeke deur die Departement gedoen, wat—
 - (i) onreëlmatige oortydse deur mediese praktisyns in diens van die Departement en betalings wat ten opsigte daarvan gedoen is, geïdentifiseer het;
 - (ii) geïdentifiseer het dat werknemers van die Departement besigheidsbelange in diensverskaffers gehad het wat besigheid met die Departement en ander Staatsorgane gedoen het; en
 - (iii) geïdentifiseer het dat werknemers van die Departement werk teen vergoeding gedoen het wat buite die omvang van hulle diens was, sonder toestemming van die uitvoerende gesag van die Departement; en
 - (f) die kwalifikasies, ondervinding en vaardighede van buitelandse mediese praktisyns te verifieer voordat sodanige praktisyns deur die Departement in diens geneem is om as mediese praktisyns in die Republiek van Suid Afrika te praktiseer.

2. Die versuim van mediese praktisyne in diens van die Departement om aan die Departement te openbaar dat hulle besigheid teen vergoeding buite die omvang van hulle diens ingevolge die Staatsdienswet, 1994 (Proklamamsie No. 103 van 1994), gedoen het, of enige kontraktuele verhouding met die Departement of hulle versuim om sodanige ongemagtigde aktiwiteit te staak na hul indiensneming deur die Departement.
3. Enige ongeopenbaarde of ongematigde belange wat mediese praktisyne in diens van die Departement mag gehad het met betrekking tot kontrakteurs, verskaffers of diensverskaffers wat getender het vir werk of wat besigheid met die Departement gedoen het.
4. Eise wat by mediese fondse ingedien is en betalings wat ten opsigte daarvan gemaak is vir dienste deur mediese praktisyne gelewer, wat die betrokke dienste ingevolge 'n kontraktuele verhouding met die Departement gelewer het.
5. Enige onwettige of onreëlmatige gedrag deur werknemers van die Departement of enige ander persoon of entiteit ten opsigte van die bewerings soos in paragrawe 1 tot 4 van hierdie Bylae uiteengesit.