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ICU WHATSAPP INSTRUCTIONS UNDER SCRUTINY AFTER PATIENT'S DEATH

A recent Northwest High Court matter has allowed a medical negligence claim to proceed against a hospital and treating doctors following the death of a patient in ICU, where allegations include remote clinical management and treatment instructions issued via WhatsApp without consistent bedside assessment.

The court dismissed an attempt by one of the ICU doctors to have the case struck out early, holding that disputes around causation and clinical responsibility must be determined at trial rather than at a preliminary stage.

The allegations centre on a deteriorating post-operative ICU patient whose condition worsened after complications from surgery. It is claimed that the responsible ICU physician was not consistently present at the bedside, remained intermittently unreachable, and provided treatment instructions remotely through messaging platforms while the patient's condition was rapidly declining.

The court found it reasonably arguable that failure to provide timely in-person assessment and coordinated ICU oversight may have materially affected the patient's chances of survival, thereby allowing the matter to proceed.

Key learning points for dental practitioners

Although arising in an ICU context, the case has direct relevance to dental practice risk management and medico-legal exposure:

- **Remote clinical decision-making carries heightened legal risk:** While telephonic or digital communication is sometimes necessary, it must not replace appropriate clinical examination where patient condition warrants physical assessment.
- **Communication platforms (including WhatsApp) are discoverable evidence:** Informal messaging used for clinical instructions may later be scrutinised in litigation as part of the official record of care.
- **Duty of care requires active oversight, not delegation by absence:** Practitioners remain legally responsible for patients under their care, even when instructions are delegated or communicated remotely, unless proper handover to a suitably qualified clinician has been effected.
- **Handover protocols are critical:** Failure to ensure continuous clinical coverage and structured handover arrangements significantly increases liability exposure, particularly in deteriorating cases.
- **Causation is rarely resolved early in litigation:** Courts are generally reluctant to dismiss negligence claims where there is a plausible link between alleged omissions and patient harm; these issues are typically resolved through full trial evidence.

For dental practitioners, the case reinforces the importance of maintaining defensible clinical governance structures, especially in group practices, emergency coverage arrangements, and after-hours care where remote communication may be used.

CANCER CLAIM WIN AGAINST DISCOVERY LIFE CLARIFIES KEY PRINCIPLE ON COVER PERIODS — WHAT IT MEANS FOR DENTAL CLAIMS AND SCHEMES

The National Financial Ombud Scheme (NFO) has ruled against Discovery Life in a dispute involving the timing of a severe illness benefit claim for cancer, confirming that the determining factor in such claims is the actual onset of the medical condition rather than the date of formal diagnostic confirmation.

The insurer had declined the claim on the basis that the diagnosis was only formally confirmed after the policy had lapsed due to non-payment of premiums. Discovery argued that the “life-changing event” only occurs upon histological confirmation of disease.

The Ombud rejected this interpretation, finding that the policy did not support a deeming provision linking the insured event to the date of diagnostic paperwork. Instead, the decisive consideration is whether the insured met the clinical criteria for the condition while the policy was still active, regardless of when confirmation was issued.

The ruling reinforces that insurers cannot rely on technical timing arguments where medical evidence shows that the underlying condition arose while cover was in force.

Implications for dentistry and Discovery-related claims administration

While this matter relates to life insurance, it has practical implications for dental claims processes, particularly where Discovery Health-administered schemes are involved:

- **Clinical reality takes precedence over administrative timing:** Where treatment is clinically justified during active membership or cover, subsequent delays in diagnosis coding, authorisation, or reporting should not automatically invalidate claims.
- **Reduced scope for retrospective rejection based on lapse dates:** Schemes or insurers may face challenges if they attempt to deny dental claims solely on the basis that definitive diagnosis or procedure coding occurred after cover termination, where the condition was already present during active membership.
- **Stronger reliance on clinical records in disputes:** Dental practitioners’ contemporaneous notes, radiographs, and treatment timelines will carry greater weight in determining eligibility than administrative processing dates.
- **Claims adjudication consistency pressure:** Medical schemes and administrators may need to align dental claims governance with a more substance-over-form

approach, particularly for ongoing or multi-stage treatments initiated during active cover.

In effect, the decision reinforces a broader principle relevant across healthcare financing: eligibility is anchored in the clinical occurrence of the condition and treatment necessity during cover, not the timing of administrative confirmation.

Members should ensure meticulous clinical documentation, particularly where treatment spans membership changes, plan terminations, or delayed authorisations, as these records will be central in any dispute resolution process.

CERTIFICATE OF NEED DECLARED UNCONSTITUTIONAL: WHAT THE RULING MEANS FOR HEALTH SYSTEM REFORM AND PROFESSIONAL PRACTICE CONTROLS

The Constitutional Court has confirmed that sections 36 to 40 of the National Health Act, which provided for the Certificate of Need system, are unconstitutional and invalid.

The judgment effectively removes the proposed mechanism that would have required healthcare professionals and health establishments to obtain state approval regarding where they may practise, expand services, or acquire certain infrastructure and equipment.

The Court found that the framework was not rationally connected to its stated objective of improving equitable access to healthcare. It further held that the provisions granted the Minister of Health and the Director-General excessively broad discretion, without adequate safeguards, and unlawfully limited the constitutional right of practitioners to freely choose their profession and place of practice.

While the Department of Health has indicated that it is reviewing alternative licensing and planning models used in other jurisdictions, it maintains that the broader National Health Insurance policy framework remains unaffected by this judgment.

The ruling follows earlier findings in the High Court and brings finality to long-standing legal uncertainty regarding the Certificate of Need regime. The Court confirmed that the provisions cannot be remedied through referral back to Parliament and must be removed from the legislation.

Reactions have been mixed. Various professional bodies and healthcare stakeholders have welcomed the decision, viewing it as an important affirmation of constitutional protections and regulatory balance. Others within the public sector have emphasised the need to continue pursuing reforms aimed at addressing inequities in access to healthcare services.

SADA previously challenged aspects of the Certificate of Need framework on procedural grounds, contributing to the broader legal scrutiny that has culminated in this final Constitutional Court determination.

Members are advised that this judgment has important implications for future regulatory approaches to health system planning and reinforces the requirement that any such measures must be lawful, rational, and properly constrained within constitutional limits.

SURVEY PARTICIPATION CALL

**SADA / DENTASA Managed Care
Discontent**

SADA Amalgam Use & Procurement

SADA and DENTASA encourage your participation in this joint survey to strengthen collaboration and understanding between private dental practitioners and dental technicians. Your feedback is valuable in helping identify opportunities, challenges, and priorities that will support the continued growth and sustainability of the profession.

SADA invites you to participate in this important survey on amalgam use and procurement within the profession. Your feedback will provide valuable insights into current practices, challenges, and future trends, helping SADA engage more effectively on matters affecting dental practitioners and the broader oral healthcare sector.

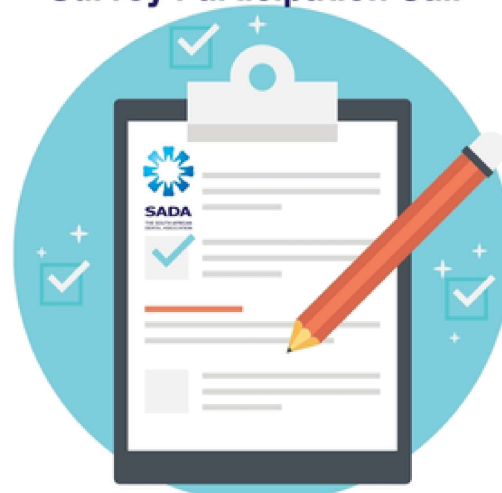
Survey Participation Call



**SADA/DENTASA
Managed Care Discontent Survey
Survey 2026**

SADA Community Service Dentist
SADA invites Community Service Dentists to participate in this survey to better understand the experiences, challenges, and support needs of young professionals entering the profession. Your participation will help inform future advocacy, engagement, and initiatives to support Community Service Dentists and strengthen the future of oral healthcare in South Africa.

Survey Participation Call

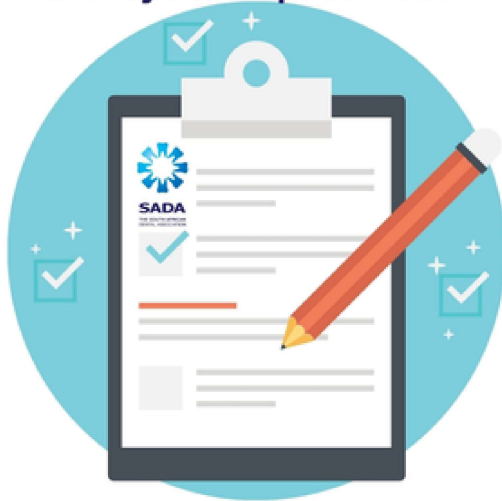


**SADA Amalgam Use & Procurement
Survey 2026**

Shaping the Future of SADA CPD and Congress

Your input is important in helping SADA shape the future of Continuing Professional Development and Congress offerings for the profession. By participating in this survey, you will help us understand members' needs, preferences, and expectations, ensuring that future initiatives remain relevant, valuable, and impactful.

Survey Participation Call



**SADA Community Service Dentist
Survey 2026**

Survey Participation Call



**Shaping the future of SADA CPD
and Congress
Survey 2026**

Yours in Oral Health

KC Makhubele

Chief Executive Officer

CALL FOR NOMINATIONS - SADA HONOURS & AWARDS



We kindly request your assistance in circulating this call for nominations within your Branch and among your professional networks and colleagues. Your support will help ensure that deserving individuals are identified and recognized for their outstanding service and achievements.

- Individual persons
- SADA Branches
- SADA Special Interest Groups
- Affiliate or Allied Organisations
- Professional peers or colleagues

Nominations should be submitted via email to secretary@sada.co.za and must be accompanied by a supporting motivation and any relevant documentation.

[Please click here to download the Nomination Form.](#)

Closing date for submissions: 30 June 2026

We encourage you to take this opportunity to nominate individuals whose contributions have had a meaningful impact on the profession and oral health in our communities.

UPCOMING EVENTS

22
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SADA AWARDS & GRADUAND GALA DINNER 22 August 2026

Will we see you in Cape Town?



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